

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0159-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:05 PM on 17 November 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", also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$1600.00,
 - An order for a payment of \$60.00 in late fees,
 - An order for a payment of \$1241.69 in compensation for damages,
 - An order for a return of possessions values at \$900.00, and
 - Authorization to retain the \$1200.00 security deposit.

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 are sections 15 and 19 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Return of Possessions - \$900.00

Relevant Submissions

The Landlord's Position

6. The landlord stated that she had entered into a 1-year, fixed-term lease with the tenant on 01 August 2020, and a copy of the executed lease was submitted with her application [REDACTED] #1). The agreed rent was set at \$1600.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$1200.00.
7. On 06 April 2021, the landlord served the tenant with a termination notice and a copy of that notice was submitted with her application [REDACTED] #2). 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 17 April 2021. The tenant vacated the premises on 30 April 2021.
8. The landlord stated that, when the tenancy began, there was a large shelving unit in bedroom #2. She testified that that unit had been taken down from the wall during this tenancy, and after the tenancy ended, the landlord stated that she was only able to find one small piece of the shelf.
9. With her application, the landlord submitted a photograph showing that shelf and she stated that that photograph was taken during the walkthrough inspection when the tenant moved in. She also submitted a screen shot from [REDACTED] [REDACTED] showing that that shelving unit cost \$955.00. The landlord is seeking \$900.00 in compensation.

The Tenant's Position

10. The tenant acknowledged that that shelving unit was affixed to the wall when she first moved in. She testified, however, that it was removed by the landlord's painter, and not her, as it was easier to paint the wall without the shelf attached to it. As proof of that point, she pointed out that the holes in the wall where the shelf had been attached were painted, meaning that it had to have been removed before the painting was completed.
11. The tenant stated that this room was small and with the shelf attached to it, it would have been difficult to put a bed in that room. She stated that instead of the painter reinstalling the shelving unit, he placed it outside, and the tenant then moved it to the shed. She claimed that it was in that shed when she vacated.

Analysis

12. The landlord submitted a photograph with her application in support of her claim for the costs of garbage removal [REDACTED] #4), which I address below. This

photograph shows the inside of the shed and on the left-hand side, on a shelf, is, what appears to be, the shelving unit which the landlord claims is missing. Based on that evidence, I find that it is more probable that the tenant had moved the shelving unit to that shed, as she had claimed, and that it is not missing.

Decision

13. The landlord's claim for compensation for missing possessions does not succeed.

Issue 2: Compensation for Damages – \$1241.69

Relevant Submissions

The Landlord's Position

14. With her application, the landlord submitted an invoice from [REDACTED] [REDACTED] who she had hired to carry out repairs at the rental unit after the tenant moved out. According that invoice, the landlord was charged \$136.56 for materials and \$750.00 for 15 hours of labour.
15. The landlord stated that because the tenant had removed the shelving unit, the holes in the walls in that room had to be plastered and the walls had to be repainted. She also complained that the tenant had put plaster on the walls in the living room and in some of the bedrooms, and those walls also had to be repaired and touch-up paint was applied. She also stated that some trim for a doorway was missing and had to be reinstalled and that there were several switch plates and lightbulbs missing. No photographs were submitted by the landlord showing that damage.
16. The landlord also claimed that she was required to hire a cleaner after the tenant moved out and she submitted a copy of an INTERAC e-Transfer receipt showing that she had paid [REDACTED] \$150.00. The landlord stated that the refrigerator was dirty, the bathrooms were not properly cleaned, and that it was just not ready to be moved into.
17. The landlord also claimed that there was significant amount of garbage left at the rental unit and in support of her claim she submitted 7 photographs showing that there was garbage left on and under the back deck, and that there was garbage left in the shed. The landlord hired a company to remove that garbage and she submitted a receipt with her application showing that she was charged \$115.00 to have that work carried out.

The Tenant's Position

18. The tenant reiterated that it was the landlord's painter who removed the shelving unit from the wall in that bedroom, and when he had done so, he did not plaster the holes that were left there, but just painted over them. She argued that she is not responsible for that damage.
19. Regarding the remaining claims, the tenant also denied responsibility. She testified that she had not carried out any plastering during her tenancy and she stated that there was no damage caused to the walls. She stated that she had not mounted a TV to the wall and claimed that only 1 picture was hung on the walls.
20. The tenant stated that the landlord had not provided her with any photographic evidence showing this damage, and in the move out report provided to her by the landlord's property management company (█████#1), no plaster can be seen on any of the walls. She acknowledged that some switch plates were missing, but she stated that these were removed by the landlord's painter at the beginning of the tenancy while he was at the unit painting.
21. Regarding the cleaning, the tenant stated that she had hired a cleaner to help her clean before she vacated and she claimed that the unit "looked fantastic" and that the bathrooms were impeccable.
22. With respect to the garbage, the tenant stated that she had left behind some garbage on the back deck and the front deck when she moved out on 30 April 2021, but she claimed that she had permission to come back and remove it and she testified that she had done so on the following day. With respect to the photographs submitted by the landlord, she figured that the landlord's real estate agent must have taken them on 30 April 2021, before she had removed the garbage. The tenant also pointed out that the photographs in the outgoing inspection report do not show that there is any garbage left on the decks. With respect to the garbage in the shed, the tenant stated that that garbage was there when she moved in, and some of that garbage was also garbage that she had removed from the house and placed there when she moved into the property.

Analysis

23. 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*

24. I was not persuaded that the tenant is responsible the costs the landlord is seeking for carrying out repairs to the rental unit. She complained of plaster on the walls in the living room and bedroom, and stated that a piece of door trim was missing. But the photographs taken during the walkthrough inspection are inconsistent with those claims. No plaster can be seen on the walls and there is no door trim missing.
25. With respect to the holes in the wall where the shelf had been, as that shelf was removed by the landlord's painter, I find that the tenant is not responsible for the costs of those repairs either, and I also find it probable that the painter also removed the switch plates.
26. With respect to the issue of cleaning, the photographs from the outgoing inspection support the tenant's claim that no cleaning was required. These photographs show that the inside of the refrigerator was thoroughly cleaned and

the photographs of the bathroom support the tenant's contention that it was "impeccable".

27. Regarding the garbage, I again agree with the tenant on this point, and it seems more probable that the landlord's photographs were taken before the garbage was removed by her and before her management company carried out the inspection. In the photographs taken on the date of the outgoing inspection, there is no garbage on the decks, meaning that it had been removed. I also accept the tenant's claim that some of the garbage was there when she moved in and I agree with her that she is not responsible for the costs of removing it.

Decision

28. The landlord's claim for compensation for damages does not succeed.

Issue 3: Rent - \$1600.00

Relevant Submissions

The Landlord's Position

29. The landlord stated that the tenant's rent was paid and up-to-date for the period ending 31 March 2021, but no rent was paid for April 2021.
30. The landlord is seeking an order for a payment of rent in the amount of \$1600.00 for that month.

The Tenant's Position

31. The tenant acknowledged that she had not paid any rent for April 2021.
32. The tenant stated that there was a flood at the rental unit and she claimed that she was without use of half of the unit between the months of January and April 2021. Because she only had use of half of the unit for those 4 months, the tenant argued that she should not be required to pay rent for April 2021.

Analysis

33. There is no dispute that the tenant had not paid her rent for April 2021.
34. With respect to the issue of the flooding, the landlord pointed out that she had given the tenant an \$800.00 rebate for the month of March 2021 because of the inconvenience. She claimed, though, that by 31 March 2021 all of the repairs were completed and the tenant had full use of the house after that date. I accept that claim.

Decision

35. The landlord's claim for a payment of rent succeeds in the amount of \$1600.00.

Issue 4: Late Fees - \$60.00

36. The landlord has assessed a late fee of \$60.00.

Analysis

37. 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.

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

Decision

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

Issue 6: Security Deposit

40. The tenant paid a security deposit of \$1200.00 on 21 July 2020 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

41. The landlord is entitled to the following:

- a) Rent \$1600.00
- b) Late Fees..... \$75.00
- c) LESS: Security Deposit..... (\$1200.00)
- d) Total Owing to Tenant..... \$475.00

06 June 2022

Date

