

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0217-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:45 AM on 20 July 2021 via teleconference.
2. The applicants, [REDACTED] hereinafter referred to as "landlord1" and "landlord2", respectively, participated in the hearing. The respondent, [REDACTED] hereinafter referred to as "the tenant", did not attend the hearing.

Issues before the Tribunal

3. The landlords are seeking the following:
 - An order for a payment of rent in the amount of \$600.00,
 - An order for a payment of \$1053.00 in compensation for damages,
 - A payment of late fees in the amount of \$75.00, and
 - Authorization to retain the security deposit of \$600.00.

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 policy 9-3: Claims for Damage to Rental Premises, and rule 29 of the Rules of the Supreme Court, 1986.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her 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 respondent's absence so long as she has been properly served. The landlords submitted an affidavit with their application stating that landlord1 had personally served the tenant with notice of the hearing on 18 May 2021, and she has had 62 days to provide a response. As the tenant were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.

Issue 1: Rent - \$600.00

Relevant Submissions

7. With their application, the landlords submitted a rental agreement (■ #1) showing that they had entered into a monthly rental agreement with the tenant commencing 01 October 2019. The agreed rent was set at \$1250.00 and it is acknowledged in that agreement that the tenant had paid a security deposit of \$600.00.
8. In mid-October 2020, the tenant informed the landlords that she was terminating their agreement and she vacated the unit on 31 October 2020.
9. Landlord1 stated that for the period ending 30 September 2020, the tenant's rent was paid and up-to-date, but he stated that for October 2020, the last month that the tenant resided at the property, she only paid \$650.00 in rent. The landlords are seeking an order for a payment of the remaining \$600.00 that is owing for that month.

Analysis

10. I accept landlord1's claim that the tenant had not paid her rent as required and that she still owes \$600.00 for October 2020. As such, the landlords' claim for a payment of rent succeeds in that amount.

Decision

11. The landlords' claim for a payment of rent succeeds in the amount of \$600.00.

Issue 2: Late Fees - \$75.00

12. The landlords have assessed a late fee of \$75.00.

Analysis

13. 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.*

14. As the tenant has been arrears since 02 October 2020, the landlords are entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Compensation for Damages: \$1053.00

Relevant Submissions

16. With their application, the landlord submitted the following breakdown of the costs that they had incurred to repairs damages that they had discovered at the rental unit after the tenant had moved out [REDACTED] #3):

- Closet door..... \$150.00
- Front door \$500.00
- Labour..... \$403.00
- Total Owing to Landlords \$1053.00

Closet Door

17. Landlord1 stated that there was a crack in a closet door which he figured was caused by one of the tenant's children punching the door. A photograph of that

door was submitted with the landlords' application (█#4) showing that damage. Landlord1 stated that he had to replace that door and he claimed that he had paid \$150.00 for a new door. No receipt was submitted with the landlords' application. Landlord1 stated that that door was already at the unit when he purchased the property in 2016 and he claimed that it took him 1 hour to install it.

Front Door

18. Landlord1 stated that the tenant had been tying her dog to the inside stair railing when she would let it outside and she would close the door over the lead. He claimed that the dog had been pulling on that lead, which had caused damage to the door frame and door jamb. No photographs were submitted with the landlords' application showing that damage. Landlord1 stated that he had to hire a contractor to repair that door and he claimed that he was charged \$500.00. No invoice or receipt was submitted with the landlords' application.

Labour

19. The landlords are also seeking compensation for 20 hours of their personal labour.
20. Landlord1 stated that they were required to repaint the majority of the apartment as there were numerous holes in the walls that needed to be repaired and he claimed that the bulk of the 20 hours they are claiming here pertains to this issue of painting. In support of that claim, the landlords pointed to a photograph showing that there were some holes in a wall where a shelf had been, and another photograph showing that the paint on a window sill was chipped.
21. Landlord1 also stated that they were required to clean the whole apartment after the tenant moved out, and this included the floors, walls, and refrigerator, and they were also required to make a couple of trips to the dump to dispose of garbage that had been left behind by the tenant. No photographs were submitted with the application concerning this portion of their claim.

Analysis

22. 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*

23. With respect to the closet door, I accept landlord1's claim that the submitted photograph shows a crack in that door and I also accept his claim that it needed to be replaced. No receipt was submitted showing the costs the landlords had incurred to purchase a new door, but I accept their claim that it took an hour to install and I therefore award them \$20.15 in compensation for their personal labour.
24. No evidence was submitted showing any damage to the front door and no invoice or receipt was submitted showing that the landlords had hired a contractor to repair that door. As such, that claim does not succeed.
25. Regarding the painting, I find that the landlord are entitled \$40.30 in compensation for 2 hours of their labour to repair the holes shown in the submitted photograph and to repair the chips on the window sill. No other evidence was submitted showing that any other painting was required or to show that cleaning was required.

Decision

26. The landlords' claim for compensation for damages succeeds in the amount of \$60.45 for 3 hours of their personal labour.

Issue 4: Security Deposit

27. According to the landlords' application, the tenant paid a security deposit of \$600.00 on 19 September 2019, and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlords' claim has succeeded, they shall retain that security deposit as outlined in this decision and attached order.

Summary of Decision

28. The landlords are entitled to the following:

- a) Rent Owing \$600.00
- b) Late Fees \$75.00
- c) Compensation for Damages \$60.45
- d) **LESS: Security Deposit..... (\$600.00)**
- e) Total Owing to Landlords **\$135.45**

10 January 2022

Date

