

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0241-05

John R. Cook  
Adjudicator

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### Introduction

1. Hearing was called at 1:45 pm on July 29, 2021 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED] hereinafter referred to as "the landlords".
3. The respondent, [REDACTED] hereinafter referred to as "the tenant," did not attend.

### Issues before the Tribunal

4. The landlord is seeking the following:
  - An order payment of \$664.83 in compensation for damages,
  - an order for vacant possession of the rented premises, and
  - Authorization to retain the security deposit.

### Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*: jurisdiction of the Director of Residential Tenancies.
6. Also relevant and considered in this case is section 18 of the *Residential Tenancies Act, 2018*: notice of termination of rental agreement, section 22: notice where tenant's obligation not met, section 10: statutory conditions, section 34: requirements for notices, and policy 9-3: Claims for Damage to Rental Premises.

## Preliminary Matters

7. The tenant was not present or represented at the hearing and I was unable to reach her by telephone at the start of the hearing. 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 placing it in the hand of her boyfriend, [REDACTED] [REDACTED] who lives with her, on 02 July 2021. 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: Compensation for Damages - \$664.83

#### Relevant Submissions

8. The landlord provided a copy of the lease renewal [REDACTED] #12) in October 2020 and confirmed that the lease is for 12 months, at \$600.00 per month and a damage deposit was paid in July 2019 for \$452.00.
9. The landlord stated that the tenant had damaged the door to the apartment, it was dented, one of the glass panes was broken and the door frame was split. Pictures provided to reflect same [REDACTED] #08 & [REDACTED] #09).
10. The landlord said that the door is approximately 4 years old.
11. The landlord also stated that the window in the bedroom was broken.
12. The landlord claims that the doors and window were in a state of good repair when the tenant took possession of the apartment. There was a condition report submitted [REDACTED] #11) that was completed upon the previous tenant's move out date. The report is dated for June 30, 2019 and the current tenant took possession the following day, July 01, 2019.
13. The landlord believes, based on the report of another tenant that there was an episode of family violence; RNC file number provided [REDACTED] #11). Following the incident the damage was noted.
14. The landlord served tenant with notice to complete the repairs [REDACTED] #04) which was served on May 9, 2021 and request for completion was to occur on or before May 15, 2021.

15. The landlord gave notice to enter premises on May 15, 2021 at 6:00 pm to check and see if the repairs are completed. The landlord served this notice on May 14, 2021.
16. The landlord determined that the repairs had not been completed. She provided an estimate for the repairs [REDACTED] #03) for \$664.83 (taxes included) and is requesting that the tenant pay for damages.

## **Analysis**

17. 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*

18. I accept the landlord's submission of the condition report the day before the tenant took possession shows that the door in question was in good condition and it is within reason to believe that on the following day the condition had not changed.
19. The landlord's pictures of the door and door frame show a damaged door and a broken door frame.
20. The tenant is obliged to fix or repair any damages caused by a willful or negligent act.
21. The quote submitted into evidence shows that the door would cost \$664.83 to replace.
22. The life expectancy of home components as outlined by the National Association of Home Builders determines that an exterior vinyl door should last 20 years. This door is currently 4 years old so the landlord is entitled to 80% of the cost of replacement. I calculate that amount to be \$531.86 (80% x \$664.83).
23. The landlord did not provide information on the cost of replacing the window so this claim will not be considered.

### **Decision**

24. The landlord's claim for compensation for damages succeeds on the amount of \$531.86.

### **Issue 2: Vacant Possession of the Rental Premises**

#### **Relevant Submissions**

25. Included in the application, the landlord submitted a copy of the termination notice █#07) which she indicated that she affixed to the tenant's front door, as shown in picture █#08), on May 25, 2021.
26. The termination notice was issued under section 22 of the *Residential Tenancies Act, 2018* (notice where tenant's obligation not met) with an effective termination date of May 31, 2021.
27. The landlord stated that the tenant has not moved from the apartment as required and is seeking an order for vacant possession of the premises.

## Analysis

28. Statutory condition 2, set out in section 10.(1) 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:*

...

**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.*

and section 22 of this Act states:

### **Notice where tenant's obligation not met**

**22.** (1) *Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.*

*(2) Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.*

*(3) In addition to the requirements under section 34, a notice under this section shall*

*(a) be signed by the landlord;*

*(b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*

*(c) be served in accordance with section 35.*

29. Section 22 of the Act allows a landlord to terminate if a tenant violates condition 2 in subsection 10(1).

30. This violation has already been determined in this decision, as the tenant has been shown to have violated this condition.
31. As the notice meets the requirements set out in this section of the *Act*, it was properly served, it is a valid notice and the tenant ought to have vacated the apartment on May 31, 2021.

### **Decision**

32. The landlord's claim for an order for vacant possession of the rented premises succeeds.
33. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

### **Issue 3: Security Deposit**

34. The landlord stated that the tenant had paid a security deposit, in 2 installments, totalling \$452.00 on 05 July 2019 (\$372.00) and 15 July 2019 (\$80.00). As the landlord's claim for damages has been successful, she shall retain that deposit as outlined in this decision and attached order.

### **Issue 4: Hearing Expenses**

35. The landlord incurred the cost of \$20.00 to file this application and the receipt was provided [REDACTED] #05). As the landlord's claim has succeeded, the tenant shall pay this hearing expense.

### **Summary of Decision**

36. The landlord is entitled to the following:
  - A payment of \$99.86, determined as follows:
    - a) Compensation for Damages .....\$531.86
    - b) Hearing Expenses.....\$20.00
    - c) **LESS: Security Deposit.....(\$452.00)**
    - d) Total.....**\$99.86**
  - An order for vacant possession of the rented premises,

- The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

12 August 2021

Date

