

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0453-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:04 AM on 17 March 2022 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", was not in attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of \$7717.21 in compensation for damages,
 - An order for a payment of rent in the amount of \$2800.00,
 - An order for a payment of late fees in the amount of \$75.00, and
 - Authorization to retain the \$1000.00 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 decision section 15 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 tenant was not present or represented at the hearing and I was unable to reach him 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 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 he has been properly served. With his application, the landlord submitted an affidavit stating that tenant had been served with the application, by e-mail, on 18 February 2022, and a copy of that e-mail was submitted with the application. 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 his absence.

Issue 1: Compensation for Damages - \$7717.21

Relevant Submissions

7. The landlord stated that he had entered into a monthly rental agreement with the tenant, commencing 01 July 2021, and a copy of that executed agreement was submitted with his application [REDACTED] #1). The agreed rent was set at \$1350.00 per month, and in 2017 that rent increased to \$1400.00. It is also acknowledged in the rental agreement that the tenant had paid a \$1000.00 security deposit.
8. In October 2020, the landlord stated that he was informed by Newfoundland Power that the tenant had cancelled his electricity account. He visited the unit on 06 October 2020, posted a notice of abandonment, and he entered and took possession of the unit on 09 October 2020.
9. The landlord stated that when he regained possession of the unit, he found that it was in very poor shape and extensive cleaning and repairs were required. With his application, he submitted a breakdown of the costs he is seeking in compensation for carrying out that work ([REDACTED] #2). There are 43 line items in that breakdown, and I've grouped them under the following headers:

Painting and Plastering

10. The landlord stated that there were significant damages caused to the walls in most of the rooms in the property. In the kitchen the tenant had mounted a dartboard, and there were holes in the walls from the darts, and the trim around the window had been removed. In the main bedroom, which the tenant was subletting, there was a strong odour of cigarette smoke, which had permeated the ceiling. There were also holes in the walls in this room from the tenant hanging things on the walls. In the upstairs bedroom, the tenant had affixed milk crates to the walls, and they had to be removed and the holes repaired. In the basement, there were numerous large holes from someone punching the walls. The landlord pointed to his submitted photographs showing this damage ([REDACTED] #3).
11. The landlord stated that the whole house had to be repainted and all of the damaged walls were plastered and primed. The landlord submitted 2 receipts

with his application █ #4) showing that he had spent \$119.74 on paint, and he also used some paint that he already had on hand. According to his breakdown, the landlord spent 112 hours carrying out that work, and he is seeking compensation at a rate of \$20.00 per hour, for a total claim of \$2240.00.

12. The landlord stated that the unit was last painted in 2014.

Garbage Removal

13. The landlord pointed to his submitted photographs showing that there was a large amount of garbage and debris left on the exterior grounds of the property, including wood, broken furniture, and other garbage. Inside the house, the landlord's photographs show there were bags of garbage, cardboard boxes, and bags of recycling. They also show that there were items in the cupboards, in closets, and on shelves. The tenant had also abandoned several mattresses, some tires, and some broken furniture. The landlord also pointed out that the tenant had left behind 3 cats and 3 kittens at the unit.
14. The landlord stated that it took him, and 2 other people, 6 hours to collect all of that garbage and bring it to the curb for bulk garbage collection. He is seeking \$360.00 in compensation for 18 hours of labour.

Window Handle

15. The landlord submitted a receipt and invoice with his application showing that he was charged \$150.77 for the costs of replacing the glass in a broken window in the garage, and for the costs of casement handle for the window in the bathroom, which was missing.

████████ Control

16. The landlord stated that once they had all of the garbage removed from the unit, he contacted Animal Control to remove the abandoned cats. It was discovered that these cats had fleas, and there was an infestation within the unit that had to be addressed before any of the required repairs and painting could be carried out. With his application, the landlord submitted an invoice from ██████████ showing that he was charged \$391.00 to have the unit treated for fleas.

Lumber

17. The landlord also complained that the tenant had caused other damages to the shed, besides the broken window, and he was required to purchase some wood and lumber to carry out these repairs. For instance, the landlord submitted a photograph showing the door to the shed, and he pointed out that he had to affix a large piece of plywood to that door as the top panel was missing. With his application, he submitted a receipt from Kent showing that he was charged \$117.54 for these supplies.

Replace Cupboard Doors

18. The landlord complained that the tenant had removed 2 cupboard doors and had burnt them. These cupboard doors needed to be replaced and he submitted receipts showing that he had paid \$110.00 for costs of purchasing 2 new doors, and another receipt, from [REDACTED] showing that he was charged \$194.10 to work on these doors to make them match the existing ones. He also submitted a receipt for \$4.00 for the costs of purchasing door handles. The landlord stated that these doors were approximately 15 years old.

[REDACTED] Petroleum

19. The landlord pointed to the submitted rental agreement in which it states, in section 7, that before the tenant vacates he is required to ensure that there is 1/4 of a tank of oil left. The landlord pointed to a photograph which he took when he took possession, showing the gauge of the tank indicating that there was no oil left in it. After he had it filled, he took a second photograph showing that the gauge indicates that it was brought up to 1/4. He also submitted an invoice with his application showing that he was charged \$232.15 for that oil.

Doors

20. The landlord's photographs also show that several doors at the unit were heavily damaged, presumably by someone punching and kicking them, and he claimed that another door was missing. He submitted a receipt with his application showing that he had purchased 3 used doors at a cost of \$75.00. He also submitted 2 receipts showing that he had purchased door knobs, at a total cost of \$97.71. The landlord stated that these doors were approximately 15 years old.

Tank Lid and Lever

21. The landlord also complained that the tenant had switched out the tank lid in the bathroom and he had replaced it with one that did not fit. He submitted a receipt with his application showing that he had spent \$60.95 for a properly fitting replacement. He also testified that the lever for the faucet for the bathtub was missing, and his receipt shows that he spent \$26.95 for a replacement.

Cleaning

22. The landlord reiterated that the tenant had abandoned 6 cats at the unit, and in several of his submitted photographs he pointed to cat feces on the floors as well as pools of urine. He stated that the whole apartment smelled of urine and feces and it needed a deep cleaning to rid it of that smell. He stated that all the surfaces in the house required cleaning, including walls and floors. With his application, the landlord submitted an invoice from [REDACTED] showing that he was charged \$3120.00 for 104 hours of cleaning, at \$30.00 per hour, and he was also charged \$200.00 for "supplies such as oven trays, light bulbs, odour neutralizer / cleaner, cherry air freshener, also carpet cleaning and electrostatic

spraying before start of cleaning". With taxes, the total invoice came to \$3818.00.

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. The photographs submitted by the landlord show that the unit was left in deplorable condition. The tenant had left behind a large amount of garbage and

broken furniture, there were numerous holes in the walls, items were left in closets and on shelves, and it appears that the unit had not been cleaned in a very long time. I accept the landlord's claim that the tenant had left behind 6 cats, which had been urinating and defecating on the floors, resulting in a very bad smell in the unit. I also accept his claim that there was a flea infestation there.

25. With respect to the costs of repainting the property, policy with this Section is that a landlord is expected to repaint a unit every 3 to 5 years as a result of normal wear and tear. Given that the unit was last painted in 2014, then, much of what the landlord is claiming here is work that would probably have to have been carried out anyhow. However, the numerous holes shown in the landlord's photographs cannot be attributed to normal wear and tear, and I therefore find that the landlord is entitled to the costs of plastering those holes and then priming those areas so they could be repainted. Based on his breakdown, I calculate that it took the landlord 43 hours to carry out that work, and I therefore find that he is entitled to \$860.00 in compensation.
26. I agree with the landlord that it would have taken at least 18 hours to remove all of the garbage shown in his photographs, and I find that he is entitled to the \$360.00 he claimed to carry out that work. I also accept his claim that he was charged \$391.00 for a flea treatment. Based on the deplorable condition of the unit and because of smell of feces and urine, I also accept his claim it would have taken 104 hours to clean the unit, and his invoice shows that he was charged \$3818.00 to have that work carried out. So that claim succeeds too. I also accept the landlord's claim that the tenant was supposed to leave behind a 1/4 tank of oil, so that claim for \$232.15 also succeeds.
27. The landlord's evidence also shows that he was charged \$117.54 for materials to carry out repairs in the shed, including some makeshift repairs to the door. Hence, I find that that claim succeeds. Likewise for the costs of replacing the broken glass for the widow in the garage, for the costs of he incurred to switch out the lid for the toilet, and the parts for the damaged faucet.
28. Furthermore, I accept the landlord's claim that he had to replace 3 doors at the unit. His submitted invoices show that he was charged \$172.71 for those doors and the doorknobs and I find that it would have taken him 3 hours to hang them. Given that interior doors have an expected lifespan of 20 years, I find that the landlord is entitled to a depreciated award of \$58.18 $(\$172.71 + \$60.00 \text{ for 3 hours of labour}) \times 5/20$. Kitchen cabinets have the same life expectancy, and I therefore find that the landlord is entitled to depreciated award of \$77.03 $(\$110.00 + \$194.10 + \$4.00) \times 5/20$.

Decision

29. The landlord's claim for compensation for damages succeeds as follows:

• Painting and plastering.....	\$860.00
• Garbage removal	\$360.00
• Flea treatment.....	\$391.00
• Cleaning	\$3818.00
• Western Petroleum	\$232.15
• Lumber.....	\$117.54
• Broken garage window.....	\$150.77
• Lid and faucet.....	\$87.90
• Replace 3 doors	\$58.18
• Cabinet doors.....	\$77.03
Total.....	<u>\$6152.57</u>

Issue 2: Rent - \$2800.00

Relevant Submissions

30. The landlord submitted a rent ledger with his application showing the payments the tenant had made since January 2020. According to this ledger, the tenant had not paid his rent for September 2020 and he moved out on 02 October 2022, without providing the landlord with any notice.
31. The landlord testified that because he had not been given any termination notice, and because he had to spend a significant amount of time carrying out repairs at the unit because of the damages caused by the tenant, he was not able to secure new tenants until 01 December 2020.
32. The landlord is seeking an order for a payment of rent in the amount of \$2800.00 for the months of September and October 2020.

Analysis

33. I accept the testimony of the landlord in this matter and I agree with him that as the tenant had not paid his rent for September 2020, he is entitled to a payment of \$1400.00 for that month. I also agree with the landlord that because of the extensive damages caused to the unit by the tenant, there was no way the unit could have been rented for November 2020, and the landlord suffered a loss of rental income for that month. As such, the landlord's claim for a payment of rent succeeds in the amount of \$2800.00.

Decision

34. The landlord's claim for a payment of rent succeeds in the amount of \$2800.00.

Issue 3: Late Fees - \$75.00

35. The landlord has assessed late fees in the amount of \$75.00.

Analysis

36. 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.***

37. As the tenant has been arrears since 02 September 2020, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 4: Security Deposit

39. The landlord stated that the tenant had paid a security deposit of \$1000.00 on 27 August 2014 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim for rent and damages has succeeded, he shall retain that deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses

40. The landlord paid a fee of \$20.00 to file this application. As his claim has been successful, the tenant shall pay this hearing expense.

Summary of Decision

41. The landlord is entitled to a payment of \$8047.57, determined as follows:

- a) Compensation for Damages \$6152.57
- b) Rent Owing \$2800.00
- c) Late Fees \$75.00
- d) Hearing Expenses \$20.00
- e) LESS: Security Deposit (\$1000.00)
- f) Total Owing to Landlords \$8047.57

30 November 2022

Date

