

Residential Tenancies Tribunal

Application [REDACTED]
Application [REDACTED]

Decision 21-0565-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:49 PM on 22 March 2022 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as "the tenant", participated in the hearing. She was represented by [REDACTED] from the law firm [REDACTED]
3. The [REDACTED] hereinafter referred to as "the landlord", was also in attendance.

Issues before the Tribunal

4. The tenant is seeking an order for refund of security deposit in the amount of \$600.00.
5. The landlord is seeking the following:
 - An order for a payment of \$600.00 in compensation for damages, and
 - Authorization to retain the \$600.00 security deposit.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this case are sections 14 and 32 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Compensation for Damages - \$600.00

Relevant Submissions

The Landlord's Position

8. The landlord stated that he had entered into a 3-month, fixed-term lease with the tenant on 01 July 2020 and a copy of that executed lease was submitted with his application. On 01 October 2020, the landlord and the tenant drafted a new rental agreement, this time running on a month-to-month basis. The agreed rent was set at \$1200.00 per month and it is acknowledged in the rental agreements that the tenant had paid a security deposit of \$600.00.
9. The tenant vacated the rented premises on 28 October 2021 after serving the landlord with a 1-month termination notice.
10. The landlord stated that after the tenant moved out, he was required to hire [REDACTED] to carry out some cleaning and painting at the unit, and with his application he submitted a text-message, which he says is from [REDACTED], in which [REDACTED] writes that he is charging the landlord \$1575.00 for 45 hours of labour and \$300.00 for materials. The landlord stated that he is not seeking the full \$1875.00 from the tenant, but is rather seeking the costs of repairing 1 wall and having rubbish removed from the property

Repair wall

11. With his application, the landlord submitted a photograph of a bedroom, and he pointed to 2 marks on the wall in that room. He stated that this room had to be repainted because of that damage and he is seeking compensation in the range of \$300.00 to \$400.00. He stated that this room was last painted in 2018.

Cleaning

12. The landlord pointed to his other submitted photographs showing what he described as "rubbish". He stated that [REDACTED] removed that rubbish and took it to the dump. He is seeking \$150.00 in compensation.

The Tenant's Position

Repair wall

13. The tenant stated that the marks on the wall identified by the landlord were already there when she moved into the unit. She also claimed that there were numerous other marks on the walls throughout the unit and with her application she submitted her own photographs, taken when she moved in, showing some of that damage.

Cleaning

14. █ pointed out that what the landlord described as “rubbish” was actually personal property that the tenant had left behind at the rental unit. This included a lamp, some potted plants, a duvet cover, and several dressers. Under questioning, the landlord acknowledged that these items were better described as “personal property” and he stated that he had no conversation with the tenant about these items before he disposed of them, which █ argued is required by section 32 of the *Residential Tenancies Act, 2018*. The tenant stated that she had made arrangements for someone to return to the unit on 29 October 2021 to retrieve these items, but they had already been taken away at that point. She also claimed that the landlord had given her ladder to his realtor.

Analysis

15. 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

16. With respect to the marks on the walls, the tenant claims that those marks were there when she moved in, and as there was no report of an incoming inspection, I find that the landlord had not established that that damage was caused by the tenant during her tenancy. And in any case, I find that that damage is very minor and ought to be chalked up to normal wear and tear. As such, this portion of the landlord's claim does not succeed.
17. With respect to the removal of the tenant's dressers, lamp, plants and duvet cover, I agree with [REDACTED] that these items were not "rubbish" but were the tenant's personal property. As identified by [REDACTED] section 32 of the *Residential Tenancies Act, 2018*, states that where a tenant abandons personal property at a rental unit, the landlord is to store those items for 30 days and provide an inventory of those items to the Director of Residential Tenancies and to the tenant. The landlord acknowledged that he had not compiled such an inventory and he also acknowledged that he did not have the permission of the Director, or of the tenant, to dispose of those items. As such, this portion of the landlord's claim also fails.

Decision

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

Issue 2: Security Deposit

19. The tenant paid a security deposit of \$600.00 on 26 June 2020 and receipt of that deposit is acknowledged in the submitted rental agreements. As the landlord's claim for compensation for damages has not succeeded, he shall return the full amount of that deposit to the tenant.

Decision

20. The landlord shall refund to the tenant the \$600.00 security deposit.

23 November 2022

Date