

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0584-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 AM on 22 March 2022 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$2507.07,
 - An order for a payment of \$631.50 in compensation for damages,
 - An order for a payment of hearing expenses totalling \$20.00, and
 - Authorization to retain the partial security deposit of \$252.79.

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*.
6. Also relevant and considered in this decision is policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Compensation for Damages - \$631.50

Relevant Submissions

The Landlord's Position

7. Landlord1 stated that she had entered into monthly rental agreement with the tenant on 01 December 2008. The agreed rent was set at \$511.00 per month and the landlord stated that the tenant had paid a security deposit of \$250.00 on 20 November 2008.
8. On 27 September 2021, the tenant sent an e-mail to the landlord informing her that she was terminating their agreement, and she vacated on 31 October 2021.
9. With their application, the landlord had submitted a damage report, indicating that they had to carry out the following repairs:
 - Install new interior door \$143.66
 - Remove abandoned items \$400.00
 - Reinstall medicine cabinet \$29.28
 - Remove wallpaper \$58.56

Total \$631.50

Interior Door

10. Landlord2 stated that the tenant had cut a hole in the bottom of a storage room door for her cat and he stated that as a result, that door had to be replaced. He is seeking \$85.10 for the costs of a new door and \$58.56 in compensation for 2 hours of labour. He stated that he figured that that door was the original door and would have been installed in 1989.

Remove Abandoned Items

11. Landlord2 stated that the tenant had left behind a large amount of her personal belongings at the unit, and the landlord was required to hire a contractor to collect those items and take them to the dump. With their application, the landlord submitted an invoice showing that they were charged \$431.25 to have that work carried out. Landlord2 stated that the tenant had left behind some abandoned furniture, and he claimed that there were items left in the shed, in the backyard, in the cabinets and in the refrigerator. He is seeking \$400.00 in compensation for the costs of having that work carried out.

Medicine cabinet and wallpaper

12. Landlord2 stated that the tenant had removed a medicine cabinet from the wall in the bathroom during her tenancy, and when he regained possession of the unit, that cabinet had to be reinstalled. He is seeking the costs of hiring his maintenance worker for 1 hour to rehang that cabinet—\$29.28. He also claimed that the tenant had put wallpaper up in the kitchen and living room during her tenancy, and it took over 2 hours to have it removed and he is seeking \$58.59 in compensation.

The Tenant's Position

Interior Door

13. The tenant acknowledged that she had cut that hole in the door for her cat. She intimated, though, that as the door was over 25 years old, she should not be held liable for the full costs of replacement.

Remove Abandoned Items

14. The tenant acknowledged that she had left some heavier things behind at the unit, including a washer and a dryer, as she claimed that this was because she was in such a hurry to vacate. With respect to the costs the landlord is seeking, the tenant agreed that the landlord was likely charged the amount they are seeking, based on what she had left behind.

Medicine cabinet and wallpaper

15. The tenant acknowledged that during her tenancy she had removed that medicine cabinet and had replaced it with a decorative mirror. She pointed out that she did not dispose of the cabinet and she claimed that it would have only taken 5 minutes to put it back in place.
16. The tenant denied that she had put any wallpaper on the walls, and she stated that the landlord is referring to stickers she had on these walls. She stated that there was no glue used with these stickers and they were easily removable, and she argued that it would not have taken 2 hours to take them down.

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. With respect to the storage room door, as such doors have an expected lifespan of 20 years, and as this door was 32 years old when the tenancy ended, I find that it had come to the end of its useful life and would soon have had to be replaced anyhow. As such, that claim does not succeed.
19. Regarding the garbage removal, the tenant did not dispute the landlord's claim that she had left behind some personal possessions at the property and she conceded that they were probably charged the amount claimed. As such, this portion of the landlord's claim succeeds.
20. The tenant acknowledged that she had removed the medicine cabinet and I agree, therefore, that the landlord is entitled to compensation for 1 hour of his worker's labour—\$29.28—to have it reinstalled. Regarding the wallpaper, no photographs were submitted showing these walls and I therefore do not have enough evidence to determine the extent of the damage. In any case, given that the landlord had not painted these walls in 13 years, where they should be repainted every 3 to 5, work on these walls would be needed anyhow.

Decision

21. The landlord's claim for compensation for damages succeeds in the amount of \$429.28, determined as follows:

• Remove abandoned items	\$400.00
• Reinstall medicine cabinet	\$29.28
Total.....	<u>\$429.28</u>

Issue 2: Rent - \$2507.07

Relevant Submissions

The Landlord's Position

22. With her application, the landlord submitted a copy of their rent records showing the payments the tenant had made since February 2020. According to these records, the tenant last had a zero-balance in October 2020, and since that time there have been 6 months where she has paid no rent whatsoever, and even though she had made 6 payments since January 2021, she still had a balance owing of \$2507.07 when she vacated at the end of October 2021.
23. The landlord is seeking an order for a payment of rent in the amount of \$2507.07.

The Tenant's Position

24. The tenant did not dispute the landlord's records and she acknowledged that she owed \$2507.07 for the period ending 31 October 2021.

Analysis

25. As the tenant acknowledges that she owes \$2507.07 in rent for the period ending 31 October 2021, the landlord's claim succeeds.

Decision

26. The landlord's claim for a payment of rent succeeds in the amount of \$2507.07.

Issue 3: Hearing Expenses

27. The landlord submitted a hearing expense claim form with their application, as well as a receipt for \$20.00 for the costs of filing this application. As the landlord's claim has been successful, the tenant shall pay this hearing expense.

Issue 4: Security Deposit

28. The tenant paid a security deposit of \$250.00 on 20 November 2008. According to the security deposit interest regulations, that deposit has accrued \$2.79 in interest, as determined in Appendix 'A'. As the landlord's claim for damages and

rent has been successful, they shall retain that deposit as outlined in this decision and attached order.

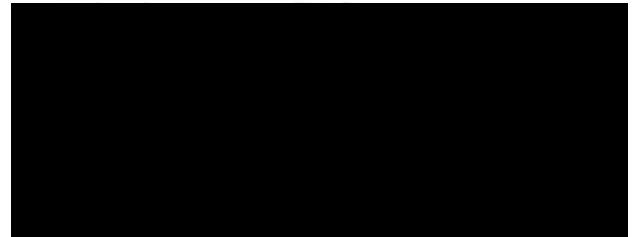
Summary of Decision

29. The landlord is entitled to the following:

- a) Compensation for Damages \$429.28
- b) Rent Owing \$2507.07
- c) Hearing Expenses \$20.00
- d) LESS: Security Deposit..... (\$252.79)**
- e) Total Owing to Landlord..... **\$2703.56**

22 September 2022

Date



Appendix 'A'

Interest Calculation

Year	Number of Days	Rate	Amount	Interest
2008	(52 days / 366 days)	x 1.00%	x \$250	= \$0.29
2009	(365 days / 365 days)	x 1.00%	x \$250	= \$2.5
2010	(365 days / 365 days)	x 0.00%	x \$250	= \$0
2011	(365 days / 365 days)	x 0.00%	x \$250	= \$0
2012	(366 days / 366 days)	x 0.00%	x \$250	= \$0
2013	(365 days / 365 days)	x 0.00%	x \$250	= \$0
2014	(365 days / 365 days)	x 0.00%	x \$250	= \$0
2015	(365 days / 365 days)	x 0.00%	x \$250	= \$0
2016	(366 days / 366 days)	x 0.00%	x \$250	= \$0
2017	(365 days / 365 days)	x 0.00%	x \$250	= \$0
2018	(365 days / 365 days)	x 0.00%	x \$250	= \$0
2019	(365 days / 365 days)	x 0.00%	x \$250	= \$0
2020	(366 days / 366 days)	x 0.00%	x \$250	= \$0
2021	(304 days / 365 days)	x 0.00%	x \$250	= \$0
Original Deposit				\$250
+ Total Interest				\$2.79
Total				\$252.79