

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0209-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:10 PM on 18 August 2021 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", also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$685.00, and
 - An order for a payment of \$1500.00 in compensation for damages.

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.

Issue 1: Compensation for Damages - \$1500.00

Relevant Submissions

The Landlord's Position

6. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant and his son, TA, on 01 September 2017, and a copy of that executed lease was submitted with the landlord's application [REDACTED] #2).

The agreed rent was set at \$1375.00 per month, and it is acknowledged in the lease that the tenant had paid a security deposit of \$1031.25.

7. TA moved out of the unit in 2018 and the tenant remained on as the sole lease-holder.
8. In early April 2021, the tenant sent a text-message to the landlord informing him that he was terminating their lease, and it was agreed at that time that the tenancy would end on 01 May 2021.
9. The landlord stated that after the tenant moved out he was required to carry out some repairs and he submitted the following breakdown of the costs he had incurred to carry out that work (█ #1):
 - Cleaning \$500.00
 - Smoke and pet odour removal \$1000.00
 - Total \$1500.00
10. The landlord testified that he was required to hire a cleaning company, at a cost of \$500.00, to carry out a deep clean of the unit to remove the smell of smoke and animal odours. No receipt and no photographs were submitted with the landlord's application.
11. Despite the costs the landlord had incurred in hiring cleaners, he claimed that the odours were not eliminated and he was required to repaint the upper floor of the unit and the basement. He stated that he believed he was charged \$1500.00 to have that work carried out, but he is only seeking \$1000.00 in compensation. No receipts or invoices were submitted with his application.
12. The landlord stated that the rental unit was last painted in 2004.

The Tenant's Position

13. The tenant denied that he had been smoking in the unit and he claimed that he only smoked outside. He also pointed out that the landlord knew that he had pets when he moved into the property and he claimed that his cat was properly litter trained.
14. The tenant did acknowledge, however, that he had not cleaned the stove before he vacated.
15. The tenant also testified that when he moved in all the rooms in the property needed repainting and he had even offered to carry out that work for the landlord. He testified that the reason he eventually moved out was because the landlord was not keeping up with the maintenance of the property and he refused to carry out repairs.

Analysis

16. 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*

17. With regards to the odours at the property, the landlord submitted no corroborating evidence to substantiate his claim that there was any smell of animals or smoke at the property, and that testimony was denied by the tenant. The landlord also produced no photographs showing the condition of the unit after the tenant moved out and no receipts to corroborate his claim that he had hired cleaners or a painter.

18. It was the tenant's testimony that the unit already needed to be repainted when he moved in, and given that a rental property ought to be painted every 3 to 5 years anyhow, and given that this unit was last painted in 2004, I have to side with the tenant here.
19. The tenant acknowledged that he had overlooked the stove when he was cleaning, so I therefore find that the landlord is entitled to \$41.50 in compensation for 2 hours of his personal labour.

Decision

20. The landlord's claim for compensation for damages succeeds in the amount of \$41.50.

Issue 2: Rent - \$685.00

Relevant Submissions

21. Both the landlord and the tenant agreed at the hearing that the tenant owed \$685.00 in rent.

Analysis and Decision

22. As there was no dispute about the issue of rent, the landlord's claim succeeds in the amount of \$685.00

Issue 3: Security Deposit

23. The landlord stated that the tenant had paid a security deposit of \$1031.25 on 01 September 2017 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been partly successful, he shall retain \$726.50 of that deposit and return the remainder to the tenant, as follows:

- a) Refund Security Deposit \$1031.25
- b) LESS: Compensation for Damages (\$41.50)
- c) LESS: Rent Owing (\$685.00)
- d) Total Owing to Tenant..... \$304.75

18 March 2022

Date

