

Residential Tenancies Tribunal

Applications 2022 No. 0017 NL

Decision 22-0017-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 16 June 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", did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$1700.00; and
 - An order for payment of \$20,000.00 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 case is rule 29 of the *Rules of the Supreme Court, 1986* and policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her 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 she has been properly served. The landlord submitted an affidavit with his application stating that he had served the tenant with the application and notice of the hearing, by e-mail, on 01 June 2022, and a copy of that e-mail was submitted with his 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 her absence.

Issue 1: Compensation for Damages - \$20,000.00

Relevant Submissions

7. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant on 01 July 2018, and a copy of that executed lease was submitted with his application. The agreed rent was set at \$1300.00 per month, and it is acknowledged in the lease that the tenant had paid a security deposit of \$650.00.
8. On 31 December 2021 the landlord issued the tenant a termination notice, requiring that she vacate the property on 31 January 2022. The tenant didn't vacate until on 16 February 2022.
9. The landlord stated that the tenant had caused significant damages to the property during this tenancy, and with his application, he submitted the following breakdown of the costs of carrying out repairs:

- Replace locks..... \$500.00
- Replace master bedroom doorframe..... \$500.00
- Replace door stopper strip \$350.00
- Repairs holes is walls..... \$1000.00
- Replace ceiling fam..... \$350.00
- Replace trim and weather strip on front door \$250.00
- Repair dent on the walls..... \$700.00
- Replace 2 broken bedroom doors \$1700.00
- Replace broken window casing..... \$450.00
- Replace trim on front of house \$250.00
- Replace broken sidings..... \$350.00
- Remove mural in basement \$500.00
- Replace broken light switches..... \$370.00
- Repair damaged countertop..... \$3000.00
- Replace damaged electrical plugs \$450.00
- Plaster damaged wall edges \$1300.00
- Paint whole house..... \$2500.00
- Fumigate house \$3000.00

• Remove garbage.....	\$500.00
• Closet doors, stove handle, unclog toilet.....	\$1980.00
Total.....	<u>\$20,000.00</u>

Replace locks

10. The landlord stated that the tenant changed the locks to the unit during this tenancy, without his permission, and he claimed that when the tenant moved out, she took these locks with her. The landlord stated that he had to purchase 3 new locks and he submitted a receipt with his application showing that he was charged \$133.37.

Doorframe

11. The landlord pointed to a photograph showing the doorframe for the master bedroom and he pointed out that there is chunk taken out of the wooden doorstop. That doorstop has not been repaired or replaced, but the landlord submitted a screenshot from the Home Depot showing that an adjustable pocket door frame would cost \$164.00. The landlord stated that that door frame was installed in 2006, when the house was built.

Door stopper strip

12. The landlord stated that the tenant had damaged a "door stopper strip" to one of the other bedrooms, and he figured this was done by someone trying to forcibly opening the door. That strip has not been repaired or replaced. No photographs were submitted showing that damage, and no quote for the cost of repair was submitted either.

Repair holes in walls

Repair dents in walls

Plaster damaged wall edges

Paint whole house

Paint over mural in basement

13. The landlord stated there were numerous holes and dents in the walls at the unit after the tenant moved out, and he pointed to his photographs showing these damaged areas. He also submitted a photograph showing that the tenant had painted a mural on a wall in the basement, without his permission. All of these holes and dents had to be plastered and then the whole unit was repainted. The landlord stated that it took him, along with his 2 bothers-in-law, about 1 week to carry out that work, and he stated that he had paid them a total of \$750.00. No receipt was submitted for those payments. He did submitted receipts, though, showing that he had paid a total of \$679.92 for paint, plaster and other painting supplies. The landlord stated that the unit was last painted in 2017.

Ceiling fan

14. The landlord stated that the lights, and light shades, for the ceiling fan were removed and broken, and he submitted a photograph with his application showing that broken light. He also submitted a screenshot from The Home Depot showing that a replacement ceiling fan would cost \$285.20. That ceiling fan has not yet been replaced. The landlord stated that it was installed in 2016.

Trim and weather stripping for front door

15. The landlord pointed to another submitted photograph showing the weather stripping on an exterior door. In that photograph, some of that weather stripping is torn, near the latch, and the landlord pointed out that there were marks on the trim and that it "was all tore up". The landlord stated that the police had informed him that they had visited the unit on several occasions concerning complaints about disturbances, and he speculated that one of the tenant's guests had tried to break into this door. That door has not been repaired and no quotes or receipts were submitted with his application.

2 bedroom doors

16. The landlord pointed to 2 of his photographs showing that the door to the master bedroom had a large hole in it, about the size of a fist, and showing that the door to another bedroom had a large crack in it. He also submitted a screenshot from The Home Depot showing that it would cost \$407.10 to purchase 3 new doors. They have not yet been replaced. These doors were installed in 2006.

Window casing

17. Another of the landlord's photographs show that there is a crack in a window sill. The landlord is seeking \$450.00 for the costs of replacing that window casing. No receipt or quote was submitted with his application. The landlord stated that this window and the casing was installed in 2013.

Trim front of house

18. According to the landlord's application, some trim work on the front of the house needs to be replaced. No photographs were submitted showing that any trims were damaged, and no quotes or receipts were submitted with the landlord's application showing that it would cost \$250.00 for repairs.

Exterior siding

19. The landlord also pointed to 4 photographs showing that there were some cracks and holes in the exterior vinyl siding of the house. He stated that he was informed by his brother-in-law that he cannot merely replaced those cracked pieces of siding, as there would be a colour mismatch, but instead, the whole

house now needs to be resided. No quotes or estimates were submitted with the landlord's application. The siding was installed in 2006.

Broken light switch

20. The landlord claimed that 3 lights switches at the unit were broken, and needed to be replaced. He pointed to a photograph showing one of these damaged switches, and he submitted a screenshot from The Home Depot showing that it would cost \$62.58 to purchase 3 new switches. They have not yet been replaced.

Replace countertop

21. The landlord also claimed that a countertop "was all broken up" and needed replacing. No photographs were submitted showing that damage and no quote or estimate was submitted with his application. He stated that his brother-in-law informed him that it would cost about \$5000.00 to have that work carried out.

Replace damaged plugs

22. The landlord stated that 3 electrical outlets needed to be replaced, and he pointed to a photograph showing 1 of these damaged outlets. The outlets have not yet been replaced, but the landlord submitted screenshots from The Home Depot showing that 3 new outlets would cost \$62.58 and he would be charged another \$20.60 for switch plates.

Fumigation

23. The landlord claimed that there was a strong animal smell in the house as the tenant had kept pets there during her tenancy. On his application, he claimed \$3000.00 for the costs of fumigating the house, but he stated at the hearing that he instead just left the doors and windows open and that he aired the house out that way. Fumigation was not required.

Garbage removal

24. The landlord stated that the tenant had left behind a large amount of garbage and personal belongings, and he submitted an e-mail exchange he had had with the tenant in which she states that she will not be returning to the unit to collect those items as she regarded them as garbage. These items included a couch, a computer desk, some lawn furniture, rakes, a scooter, a Christmas tree, a table and chair set and a dog cage. All of these items can be seen in the photographs submitted by the landlord, as well as bags of garbage. The landlord stated that he had spent \$150.00 to rent a dumpster, but no receipt was submitted with his application. He claimed that his brothers-in-law spend a day and a half collecting those items and putting them in the dumpster.

Closet doors, stove handle, unclog toilet

25. The landlord stated that 5 closet doors were removed at the property and placed in the crawlspace. He stated that his brother-in-law informed him that these doors cannot be rehung as the hinges are broken, and they instead need to be replaced. No quote was submitted with his application for the costs of purchasing new closet doors.
26. The landlord also pointed to a photograph showing that the handle for the oven door was broken off. That handle was not replaced and no quote was submitted with his application. The landlord stated that he suspects that the whole stove will have to be replaced.
27. He also pointed to a photograph showing the inside of the refrigerator and he stated that all the shelving units in that refrigerator have been removed. The landlord has not replaced these shelves and he submitted no quotes for the costs of purchasing new shelves. He also stated that he suspects he will have to purchase a new refrigerator.
28. The landlord also claimed the toilet was clogged after he regained possession of the unit, and his brother had to use a plumbing snake to unclog it. He was not charged for that work.

Analysis

29. 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*

30. With respect to the locks, although I accept the landlord's claim that the tenant had removed the locks when she vacated, I find that the landlord is not entitled to the costs of purchasing new locks, as that is an expense a landlord would incur anyhow, as there is an expectation that a landlord would always change the locks at the end of a tenancy for the safety and security of any new tenants he is putting in place.

31. Regarding the doorframe and the doorstop, I cannot discern any damage to the doorframe in the landlord's photographs, and the photograph he identified at the hearing only shows that there is a chunk of wood missing from the doorstop. That evidence does not establish that the doorframe needs to be replaced.

32. With respect to the painting, as this unit was last painted in 2017, and as it is expected that a landlord would repaint a rental unit every 3 to 5 years anyhow, the majority of the costs the landlord is seeking here would be costs he would soon incur anyhow. Nevertheless, some of the damages to the walls exceed the standard of normal wear and tear, and I therefore find that the landlord is entitled to compensation for the costs of plastering, sanding and priming those areas. Based on the submitted receipts, I calculate that \$95.59 was spent on supplies to carry out that work, and I also find that the landlord is entitled to compensation for 10 hours of labour to carry out that work. Policy with this Section is that a landlord may claim up to \$21.70 per hour for their personal labour, so the landlord is entitled to \$217.00.

33. The landlord's evidence also shows that the ceiling fan is damaged and I agree with him that it needs replacing. Ceiling fans have an expected lifespan of 20 years, and given that it was installed in 2016, I find that the landlord is entitled to a depreciated award of \$199.64 ($\$285.20 \times 14/20$).

34. I was not persuaded that the landlord is entitled to any compensation for the costs of repairing the weather stripping on the front door. On examination of the

submitted photograph, that damage appears to be very minor, and it seems probable that it is just the result of normal use, as the damage is located where the latch meets the strike plate. In any case, no evidence was submitted to establish that this would cost \$250.00 to repair.

35. Regarding the 2 bedroom doors, the landlord's evidence does show that these doors have suffered damage which exceeds the standard of normal wear and tear. As these doors were installed in 2006, and as interior doors have an expected lifespan of 20 years, I find that the landlord is entitled to an award of \$54.28 (\$407.10 for 3 doors x 2/3 doors x 4/20 years remaining in lifespan).
36. The landlord's evidence showing that there is a small, hairline crack in the window sill does not warrant an award for the costs of replacing the whole window casing. And as with the weather stripping, the landlord presented no evidence to establish that he would incur \$450.00 to have that matter addressed. The same goes for the costs the landlord is claiming for the damaged trim, the damaged siding, the countertop, the dumpster rental, the closet doors, the handle for the oven door, and the shelves for the refrigerator.
37. With respect to the light switches and the electrical outlets, these items have an expected lifespan of 10 years, and given that they were installed in 2006, I have to conclude that they've come to the end of their useful life and would soon have to be replaced anyhow. So those claims don't succeed.
38. This leaves the garbage removal. Based on the photographs submitted by the landlord, I find that compensation for another 10 hours of his labour is a reasonable amount of time to collect those items and place them in the dumpster: \$217.00.

Decision

39. The landlord's claim for compensation for damages succeeds in the amount of \$783.51, determined as follows:

• Plaster and prime walls	\$312.59
• Ceiling fan	\$199.64
• Replace broken doors	\$54.28
• Garbage removal	\$217.00
 Total	 <u>\$783.51</u>

Issue 2: Rent - \$1700.00

Relevant Submissions

40. The landlord stated that during this tenancy, \$902.00 of the monthly rent was paid, on the tenant's behalf, by the [REDACTED] [REDACTED], and the tenant paid the remaining \$398.00 directly to the landlord.
41. The landlord testified that in January 2022, he received the \$902.00 from [REDACTED], but the tenant did not pay her portion for that month. He also testified that in February 2022, neither the tenant nor [REDACTED] paid any portion of the \$1300.00 rent. The landlord calculates that the tenant owes him \$1700.00 for those 2 months.

Analysis

42. I accept the landlord's claim that the tenant had not paid her rent as required. Based on his testimony, I find that the landlord is entitled to a payment of \$398.00 for January 2022 and the full rent of \$1300.00 for February 2022, for a total award of \$1698.00.

Decision

43. The landlord's claim for a payment of rent succeeds in the amount of \$1698.00.

Issue 3: Security Deposit - \$750.00

44. The landlord stated that the tenant had paid a security deposit of \$650.00 on 01 July 2018, and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Summary Decision

45. The landlord is entitled to a payment of \$1831.51, determined as follows:

- a) Compensation for Damages \$783.51
- b) Rent Owing \$1698.00
- c) LESS: Security Deposit..... (\$650.00)
- d) Total Owing to Landlord..... \$1831.51

07 December 2022

Date

John R. Cook
Residential Tenancies Tribunal

