

Residential Tenancies Tribunal

Applications 2022 No. 0060 NL

Decision 22-0060-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 02 May 2022 via teleconference.
2. The applicants [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2" respectively, both 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 \$4000.00;
 - An order for payment of \$5532.50 in compensation for damages; and
 - Authorization to retain the \$750.00 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 case is sections 14 and 19 of the *Residential Tenancies Act, 2018* 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 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 he has been properly served. The landlords submitted an affidavit with their application stating that landlord2 sent the application and notice of the hearing to the tenant by e-mail, on 04 February 2022, and a copy of that e-mail was submitted with their 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 - \$5532.50

Relevant Submissions

7. The landlords stated that they had entered into a 1-year, fixed-term lease with the tenant on 01 March 2020, and a copy of the executed agreement was submitted with their application (L#1). The agreed rent was set at \$1600.00 per month, paid bi-weekly, and the landlords stated that the tenant had paid a security deposit of \$750.00 on 20 February 2020.
8. On 21 January 2022, the landlords issued the tenant a termination notice and a copy of that notice was submitted with their application (L#2). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 01 February 2022. The tenant moved on that date.
9. The landlords stated that the tenant had caused significant damage to the rental unit during this tenancy, and with their application they submitted the following breakdown of the costs to carry out repairs (L#4):

• Dump runs	\$250.00
• Replace drywall.....	\$75.00
• Cleaning costs.....	\$977.50
• Repaint house	\$2500.00
• Replace baseboards	\$50.00
• Replace 2 door boxes	\$1600.00
• Repair window screen.....	\$20.00
• Replace heater.....	\$60.00
Total.....	<u>\$5532.50</u>

Dump Runs

10. Landlord2 stated that the tenant had left behind a large amount of garbage at the unit, including old furniture, and he made 4 trips to the dump in his pickup truck, and he stated that he made an additional trip after he had rented a U-Haul moving van. In support of their claim, the landlords pointed to their submitted

photographs (L#5) showing the garbage and furniture which had been left behind. The landlords are seeking the costs of renting the moving van, and they submitted a receipt with their application showing that they were charged \$123.54. They are also seeking \$80.00 in compensation for 4 hours of their personal labour to remove and dispose of the garbage, and \$75.00 for the costs of purchasing gasoline.

Drywall Replacement

11. Landlord2 testified that there were a few holes in the wall that needed to be patched, and that there was also a full section of drywall that had been cut out of the basement ceiling, and he pointed to his photographs showing this damage. Landlord2 stated that it took him 2 hours to repair those walls, and he testified that he used drywall that he already had on hand.

Cleaning

12. The landlords submitted an invoice for cleaning services, showing that they were charged \$977.50 to have the unit professionally cleaned. Landlord2 stated that the unit had to be cleaned from "top to bottom", and he complained that there were nicotine stains everywhere, even though, according to the rental agreement, smoking was not permitted. He claimed that all the floors, walls and ceilings had to be washed and he stated that the oven, stove and refrigerator were very dirty. Landlord1 also stated that that there was mold everywhere and that no one would have entered the property to carry out any repairs until this cleaning had been completed. In support of their claim, the landlords pointed to their submitted photographs showing the condition of the property after the tenant moved out.

Paint and Labour

13. Landlord2 testified that the rental premises was last painted in February 2020 prior to it being occupied by the tenant. He testified that the whole place needed to be painted because of the smell of smoke, the mold, and various marks on the walls as well as the larger holes that had to be repaired. Landlord2 testified that a local painter was hired to complete the required painting and the landlords submitted a receipt (see page2 in L# 7) showing that they were charged \$2500.00 to have that work carried out.

Baseboard replacement

14. Landlord2 testified that the baseboards in the living room and the hallway had to be replaced due to what appeared to be pet damage. He speculated that the tenant's cat may have used the baseboard as a scratching post. The landlords submitted a receipt showing that they were charged \$58.95 for 5 pieces of baseboard and they pointed to their submitted photographs showing this damage.

2 Door boxes replaced in garage

15. Landlord1 testified that a door box for one of the doors in the garage needs to be replaced because it was heavily scratched up by an animal, which she figured had been trapped in there or had been locked in. A photograph showing that damage was submitted with their application. Landlord2 stated that a second door box needed to be replaced as well. That work has not yet been carried out, but the landlords submitted an estimate from their handyman in which he states that he would charge them \$1600.00 to purchase and install 2 new door boxes.

Window screen repair

16. Landlord2 testified that the side window screen needed to be replaced because it looked as though the tenants had cut pieces from it. He stated that this screen was replaced by his handyman and he was charged \$20.00 to have that work carried out.

Garage heater replacement

17. The landlords pointed to a photograph showing that a baseboard heater in their garage was heavily damaged and they claimed that it had to be replaced. That work was carried out by their handyman, but no receipt for the heater was submitted with their application.

Analysis

18. 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*

19. Regarding the garbage removal, the landlord's submitted evidence shows that there was a significant amount of garbage left behind at the unit and I accept their testimony that they were required to make 5 separate trips. Accordingly, I find that the landlords are entitled to the claimed \$80.00 in compensation for 4 hours of their labour, as well as \$123.54 for the costs of renting a moving van. No receipt was submitted for the purchase of gasoline, so that claim fails.
20. The landlords' evidence also clearly shows that there was damage caused to the drywall in several walls and ceilings, and I find that \$75.00 for the costs of repairing those areas to be reasonable. The landlords' photographs also show that there was a significant amount of dirt and mold at the property and I accept their testimony that all the surfaces as had to be washed to rid the unit of the smell of smoke. I accept the landlords' testimony that it took 3 days to carry out that cleaning, and I find that they are entitled to the \$977.50 claimed here.
21. The landlord's evidence also shows that there were numerous holes and gouges in the walls, that there was mold on the walls and I accept their testimony that there was a strong smell of cigarette smoke in the unit, and I therefore agree with them that the whole unit had to be repainted. Given that a landlord is expected to repaint a rental property every 3 to 5 years, and given the unit was last painted in 2020, just before the tenant moved in, I find that the landlords are entitled to a depreciated award of \$1500.00 ($\$2500.00 \times 3/5$)
22. I also accept the landlords' claim that some baseboards needed replacing, so I also find that they are entitled to the \$58.59 claimed here.

23. Regarding the door boxes, I found that there was insufficient evidence presented at the hearing to establish that 2 whole door boxes needed replacing, so that claim does not succeed. Although no receipts were submitted for the costs of the materials to repair the window screen and replace the baseboard heater, I find that the costs sought here, \$20.00 and \$60.00, respectively would cover their handyman's labour. As such, those claims succeed.

Decision

24. The landlord's claim for compensation for damages succeeds in the amount of \$2894.63, determined as follows:

• Dump runs	\$203.54
• Replace drywall.....	\$75.00
• Cleaning costs.....	\$977.50
• Repaint house.....	\$1500.00
• Replace baseboards	\$58.59
• Repair window screen.....	\$20.00
• Replace heater.....	\$60.00
Total.....	<u>\$2894.63</u>

Issue 2: Rent - \$4000.00

Relevant Submissions

25. Landlord2 stated that the tenant had only paid \$800.00 towards the rent for November 2021, and she paid no rent for December 2021 or January 2022.

26. The landlords are seeking an order for a payment of \$4000.00 in outstanding rent for those 3 months (\$800.00 + \$1600.00 + \$1600.00).

Analysis

27. I accept that the landlords' testimony in this matter and I agree with them that the tenant had not paid her rent as required. As the tenant only paid \$800.00 for November 2021, and never moved out until 01 February 2022, the landlords' claim succeeds in the amount of \$4000.00.

Decision

28. The landlord's claim for a payment of rent succeeds in the amount of \$4000.00.

Issue 3: Security Deposit - \$750.00

29. The landlords stated that the tenant had paid a security deposit of \$750.00 on 20 February 2020, and a copy of their banking records were submitted showing that e-Transfer. As the landlords' claim has been successful, they shall retain that deposit as outlined in this decision and attached order.

Summary Decision

30. The landlords are entitled to a payment of \$6144.63, determined as follows:

- a) Compensation for Damages \$2894.63
- b) Rent Owing \$4000.00
- c) LESS: Security Deposit..... (\$750.00)
- d) Total Owing to Landlord..... \$6144.63

15 November 2022

Date

[REDACTED]
John R. Cook
Residential Tenancies Tribunal