

Residential Tenancies Tribunal

Applications 2022 No. 0088NL

Decision 22-0088-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 03 May 2022 via teleconference.
2. The applicants [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", was not in attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$1491.00;
 - An order for payment of \$579.12 in compensation for damages; and
 - Authorization to retain the \$400.00 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 are 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 landlord submitted an affidavit with her application stating that she had served the tenant, by e-mail, on 22 February 2022, and a copy of that e-mail was submitted with her 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 - \$579.12

Relevant Submissions

7. The landlord stated that she had entered into a 6-month, fixed-term lease with the tenant, and [REDACTED], on 01 June 2020, and a copy of that executed agreement was submitted with her application. The agreed rent was set at \$850.00 per month, and it is acknowledged in the lease that a security deposit of \$400.00 had been paid.
8. The landlord stated that in July 2021 the tenant and [REDACTED] had a dispute and [REDACTED] moved out of the unit at that time. The landlord testified that she had an agreement with the tenant that she would remain at the unit as the sole leaseholder after that date.
9. The tenant fell into rental arrears shortly after [REDACTED] moved out, and on 15 November 2021 the landlord issued her a termination notice, and a copy of that notice was submitted with her application. 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 26 November 2021. The landlord testified that the tenant vacated on that date.
10. The landlord stated that she was required to carry out repairs after the tenant vacated, and with her application she submitted the following breakdown of the costs she had incurred:

• Privacy knob.....	\$41.04
• Paint.....	\$56.67
• Smoke alarm.....	\$49.90
• Interior door.....	\$119.68
• Interior door.....	\$97.74
• Hole saw	\$12.64
• Axxess nickel plate.....	\$13.77
• Window blinds	\$37.68
• Garbage removal	\$150.00
Total	<u>\$579.12</u>

11. With her application, the landlord submitted 2 photographs showing a bedroom door with a hole punched in it, and she claimed that the doorknob was also destroyed. That door and doorknob have since been replaced, and the landlord also purchased a saw to make the hole for the new doorknob, and she also had to purchase a plate for the latch. No receipts were submitted with her application. The landlord claimed that this door was installed in 2012, when the apartment was constructed.
12. The landlord also claimed that the closet door was cracked and had to be replaced. She also claimed that the smoke alarm had been taken apart by the tenant and was no longer working, and also had to be replaced. No photographs were submitted showing the closet door or the smoke alarm, and no receipts were submitted with her application.
13. The landlord also complained that tenant had mounted a mirror and shelf in the bedroom, and she pointed to her photographs showing that there were holes left in the walls when these items were taken down. The landlord claimed that that bedroom needed to be repainted, as a result, and she testified that it took her 3 days to carry out that work. No receipt was submitted with her application for costs of purchasing the paint.
14. Another photograph shows that the plastic mini-blinds in 1 window were damaged, and the landlord claimed that the tenant's cat had caused that damage. Those blinds have since been replaced, but no receipt was submitted with her application.
15. The landlord also stated that the tenant had left behind a significant amount of garbage, and she was required to collect that garbage and make 2 trips to the dump. The landlord pointed her photographs showing one load of that garbage, which included a barbecue, a heavily scratched sofa, a large scratching post, some cardboard boxes, and lumber. Another photograph shows that there was a large pile of old wood left in the shed. She testified that it took her 1 full day to collect and remove that garbage and she is seeking \$150.00 in compensation.

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. I accept the landlord's claim that the tenant had damaged the bedroom door, the window blinds, and that she had put some holes in the walls in the bedroom when he mounted the shelves and mirror. I also find it probable that a closet door was broken and that the smoke alarm was no longer working. The landlord is seeking an order for the replacement costs of these damaged items, as well as the costs of purchasing paint, but as no receipts or invoices were submitted with her application, I find that she has failed to establish the costs she is seeking here.
18. With respect to the garbage removal, I accept the landlord's claim that she was required to collect those items left behind by the tenant and that she had to make 2 trips to the dump. I find that \$150.00 is a fair award as compensation for her labour and the fuel costs for those 2 trips.

Decision

19. The landlord's claim for compensation for damages succeeds in the amount of \$150.00.

Issue 2: Rent – \$1491.00

Relevant Submissions

20. With her application, the landlord submitted a rent ledger showing the payments the tenant had made since the tenancy began in 2020. According to these records, the rent was paid and up-to-date for the period ending 31 July 2021.
21. These records show, though, that only 3 payments were made after that date: \$675.00 on 16 September, \$734.00 on 30 September, and \$500.00 on 14 October 2021. The landlord calculates that the tenant owes her \$1491.00 for the period ending 30 November 2021.

Analysis

22. I accept the landlord's claim that the tenant had not paid her rent as required. Based on her submitted rent records, I agree with her that her tenant owes \$1491.00.

Decision

23. The landlord's claim for a payment of rent succeeds in the amount of \$1491.00.

Issue 3: Security Deposit

24. The landlord stated that the tenant had paid a security deposit of \$400.00 on 01 June 2020, and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

Summary Decision

25. The landlord is entitled to a payment of \$1241.00, determined as follows:

- a) Compensation for Damages \$150.00
- b) Rent Owing \$1491.00
- c) LESS: Security Deposit..... (\$400.00)
- d) Total Owing to Landlord..... \$1241.00

07 December 2022

Date

John R. Cook
Residential Tenancies Tribunal

