

Residential Tenancies Tribunal

Applications 2022 No. 316NL

Decision 22-0316-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 21 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”, 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 \$1050.00;
 - An order for a payment of late fees in the amount of \$75.00;
 - An order for payment of \$700.00 in compensation for damages;
 - An order for a payment of \$20.00 for hearing expenses.

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 him 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 her application stating that she 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 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 his absence.

Issue 1: Compensation for Damages - \$1050.00

Relevant Submissions

7. The landlord stated that she had entered into a rental agreement with the tenant on 01 February 2021. The agreed rent was set at \$525.00 per month, and the landlord stated that the tenant had paid a \$393.75 security deposit.
8. The rental complex is a house, and the tenant was renting 1 bedroom in that house, which had its own bathroom. There were 4 other rooms being rented out, and the tenant shared the kitchen, the dining room and the 2 living rooms with these other 4 tenants.
9. The landlord issued the tenant a termination notice on 05 January 2022 and he vacated on 01 February 2022.
10. The landlord stated that the tenant had caused some damages to the unit during his tenancy, and she submitted the following breakdown of the costs to carry out the repairs:

- Paint and supplies..... \$25.00
- Labour to paint \$160.00
- Repair retaining wall..... \$1832.60
- Cleaning and garbage removal \$45.00

Total..... \$2055.60

Painting

11. The landlord stated that tenant had sought her permission to paint his bathroom. She agreed and she supplied the tenant with some paint. The landlord claimed that the tenant had not finished the painting, and she was required to repaint the bathroom and the ceiling after he vacated. She submitted a receipt with her application showing that she had paid \$83.03 for paint, and she testified that her handyman, [REDACTED], had charged her \$160.00 to carry out that work. No receipt was submitted. The landlord stated that that bathroom was last painted in 2013.

Repair retaining wall

12. The landlord stated that the tenant and 2 of his roommates had placed a large pool on the lawn in front of the house. When that pool was emptied, the water washed out the retaining wall between the lawn and the sidewalk. In support of her claim, the landlord submitted a photograph showing the area where the retaining wall had been after it was washed away. The landlord stated that her handyman repaired that wall and she submitted an e-mail from him, in which he details the work he carried out and he states that he is charging her \$1832.60. The landlord stated that these 3 tenants were responsible for these costs and it was agreed that they would each forfeit their security deposits as compensation. With her application, the landlord submitted a copy of a text-message exchange she had with the tenant in which he writes "The damage for the wall was covered by my damage deposit and my assistance in repairing and cleaning the mess".

Remove garbage

13. The landlord also complained that the tenant had left behind several garbage bags at the property, and she claimed that he had left some of his belongings in the closet. In support of that claim, she pointed to a photograph showing that there were 3 bags of garbage at the bottom of a flight of stairs. The landlord is seeking an order for a payment of \$45.00 for the costs of hiring a cleaner to collect and remove the garbage and the costs of having her handyman bring that garbage to the dump.

Analysis

14. 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

15. With respect to the costs of painting of the bathroom, I find that that claim does not succeed. As a result of normal wear and tear, it is expected that a landlord would have to repaint the walls at a rental property every 3 to 5 years. As this bathroom was last painted in 2013, it was probably due to be repainted, and these were costs the landlord would have incurred anyhow.
16. I accept the landlord's testimony concerning the damage that was caused to her retaining wall, and I also accept her evidence which shows that the tenant had agreed to compensate her in an amount equivalent to the security deposit to cover his portion of the costs to rebuild that wall. As such, this portion of the landlord's claim succeeds in the amount of \$393.75. Her evidence also shows that the tenant had left behind some garbage at the property, and I also find that she is entitled to the costs she had claimed its removal: \$45.00.

Decision

17. The landlord's claim for compensation for damages succeeds in the amount of \$438.75 (\$393.75 + \$45.00).

Issue 2: Rent - \$1050.00

Relevant Submissions

18. The landlord stated that the tenant had not paid his rent for December 2021 or for January 2022. She is seeking an order for a payment of \$1050.00 for those 2 months.

Analysis

19. I accept the landlord's claim that the tenant had not paid his rent as required. Based on her testimony, I find that the landlord is entitled to a payment of \$1050.00 for December 2021 and January 2022.

Decision

20. The landlord's claim for a payment of rent succeeds in the amount of \$1050.00.

Issue 3: Late Fees - \$75.00

21. The landlord has assessed late fees in the amount of \$75.00.

Analysis

22. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

23. The landlord stated that the assessment of late fees commenced in January 2022. As the tenant has remained in arrears since 01 January 2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

24. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 3: Security Deposit

25. The landlord stated that the tenant had paid a security deposit of \$393.75 on 01 February 2021. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses

26. The landlord submitted a hearing expense claim form with her application, as well as a receipt for \$20.00 for the costs of filing this application and a receipt for \$50.00 for the costs of having her affidavit notarized. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.


Summary Decision

27. The landlord is entitled to a payment of \$1240.00, determined as follows:

a) Compensation for Damages	\$438.75
b) Rent Owing	\$1050.00
c) Late Fees	\$75.00
d) Hearing Expenses	\$70.00
e) LESS: Security Deposit.....	(\$393.75)
f) Total Owing to Landlord.....	<u>\$1240.00</u>

13 December 2022

Date


John R. Cook
Residential Tenancies Tribunal