

Residential Tenancies Tribunal

Application 2022 No. 558NL

Decision 22-0558-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 23 August 2022 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED] hereinafter referred to as “the landlord”.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant”, did not participate.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$3000.00 and
 - An order for compensation for damages in the amount of \$718.75.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is sections 19 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

7. 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 the tenant was served, by e-mail, on 12 August 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 - \$718.75

Relevant Submissions

8. The landlord stated that he had had entered into a 1-year, fixed-term rental agreement with the tenant on 03 December 2021, and a copy of the executed lease was submitted with his application (L#1). The agreed rent was set at \$1000.00 per month and it is acknowledged in the submitted lease that the tenant had paid a security deposit of \$700.00.
9. The landlord stated the tenant had fallen into rental arrears in March 2022, and he therefore issued her a termination notice on 23 March 2022, requiring that she vacate the unit on 03 April 2022. He testified that she did not move out until 20 May 2022.
10. After the tenant moved out, the landlord stated that he was required to carry out some repairs at the unit and he submitted a copy of the maintenance records with his application showing the costs he had incurred, as follows:

- Supply paint \$86.25
- Repair all drywall patches, and paint..... \$230.00
- Repair bedroom door \$86.25
- Supply and install new exterior door \$172.50
- Remove garbage and clean \$143.75

Total \$718.75

Plastering and painting

11. The landlord stated that the unit was last painted two years ago. He submitted photographs with his application (L#3) showing that there were a number of holes punched in the walls, there were black marks on the ceiling and scratches in the wall. The landlord stated that he had hired a contractor to supply the paint and to carry out the repairs, but no receipt was submitted with his application.

Bedroom Door

12. The landlord testified that he believed that the bedroom door was off its hinges, it was split and that it had to be re-glued. He stated that the door was over 20 years old. No photographs were submitted showing that damage.

Exterior Door

13. The landlord pointed to a photograph showing the exterior door, and he claimed that it had been kicked in after the tenant had locked herself out. The photograph shows that the door is cracked and dented and the landlord claimed that it could not be repaired but had to be replaced. This door was approximately 15 years old.

Cleaning and garbage removal

14. The landlord testified that there was garbage left around the house along with dog food and so this required a number of dump runs before the rental unit could be cleaned. The landlord testified that this required 4 hours of labour and this work was carried out by his contractor's wife.

Analysis

15. 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 willful 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

16. The life expectancy of an interior door is 20 years, while a steel exterior door is expected to last 15 years. As these 2 doors had come to the end of their expected lifespan, I conclude that they would soon have to be replaced anyhow. As such, the landlord's claim for repairing and replacing these doors does not succeed.
17. Regarding the plastering, painting and cleaning, the landlord's evidence does show that there was some damage caused to these walls and that some cleaning was required. The landlord had not submitted any receipt for the costs of purchasing the painting supplies, and no receipt was submitted from his contractor. I find that \$100.00 is a fair award to have that work carried out.

Decision

18. The landlord's claim for compensation for damages succeeds in the amount of \$100.00.

Issue 2: Rent - \$3000.00

Relevant Submissions

19. The landlord submitted a rent ledger with his application showing the payments he had received from the tenant since she had moved in. These records show that the tenant's rent was paid and up-to-date for the period ending 28 February 2022, but he pointed out that the tenant had not paid her rent for March, April or May 2022.
20. The landlord is seeking an order for a payment of \$3000.00 in rent for those 3 months.

Analysis

21. I accept the testimony of the landlord in this matter and I find that the tenant had not paid her for the last 3 months of her tenancy. As such, the landlord's claim succeeds in the amount of \$3000.00.

Issue 3: Hearing Expenses

22. The landlord paid a fee of \$20.00 to file this application. As his claim has been successful, the tenant shall pay this hearing expense.

Issue 4: Security Deposit

23. The landlord stated that the tenant had paid a security deposit of \$700.00 on 03 December 2021, 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 of Decision

24. The landlord is entitled to the following:

a) Compensation for Damages	\$100.00
b) Rent Owing	\$3000.00
c) Hearing Expenses	\$20.00
d) LESS : Security Deposit.....	(\$700.00)
e) Total Owing to Landlord.....	<u>\$2420.00</u>

04 November 2022

Date


John R. Cook
Residential Tenancies Tribunal