

Residential Tenancies Tribunal

Application 2022 No. 1111NL

Decision 22-1111-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:06 PM on 02 March 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively, 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 a payment of \$17,600.00 in compensation for damages,
 - An order for a payment of rent in the amount of \$5008.00,
 - An order for a payment of late fees in the amount of \$75.00, and
 - Authorization to retain the \$1500.00 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 decision is policy 9-3: Claims for Damage to Rental Premises 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 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. With their application, the landlords submitted an affidavit stating that tenant had been served with the application, by e-mail, on 20 January 2023, and a copy of that e-mail was also submitted with the 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.

7. On their application, as named respondents, the landlords have listed both the tenant and "████████. █████" ("MC"), from the law firm ██████████, represented ██████████ at the hearing, and ██████████ ("AN"), ██████████, was also in attendance. MC argued that ██████████ was not a party to the lease, for the following reasons:

- Firstly, MC pointed out that [REDACTED] is not a legal entity. [REDACTED] is a legal entity, and does business as ' [REDACTED]' but that entity is nowhere named in this lease.
- MC also pointed out that the tenant did not have the authority of the [REDACTED] to bind it to any rental contract. AN corroborated that claim.
- And finally, MC pointed out that the lease was amended on 08 January 2020, just a month after the tenant moved in. In the original agreement, the lease was made between " [REDACTED]" and " [REDACTED]". In the amendment, though, " [REDACTED]" is added to the lease along with [REDACTED], as landlords, and the tenant is now listed as " [REDACTED]", with the reference to " [REDACTED]" expunged. MC argued that even if it is found that [REDACTED] was originally a tenant, that entity was removed as a named tenant when the lease was amended in 2020.

I accepted each of these points, and at the hearing I removed ' [REDACTED] as a named respondent/tenant to this application.

Issue 1: Compensation for Damages - \$17,600.00

Relevant Submissions

8. Landlord1 stated that they had entered into a rental agreement with the tenant on 01 December 2019, and a copy of that agreement was submitted with their application. The agreed rent was set at \$3000.00 per month, and the landlords write on their application that the tenant had paid a security deposit of \$1500.00. The tenant moved out of the unit on 30 October 2022, and the landlords changed the lock code for the door on 31 October 2022.

9. Landlord1 stated that the house was only built in 2018, and had only been occupied by her for a period of 6 months before this tenancy began. She stated that everything in the house was brand new and in good condition, but when the tenant vacated, she discovered that he had caused significant damages to the property and the whole unit needed cleaning.
10. With their application, the landlords submitted the following breakdown of the costs carry out the repairs and the cleaning at the unit after the tenant moved out:

• Living room floor scratched	\$3000.00
• Kitchen floor stained.....	\$3000.00
• Master bedroom floor scratched.....	\$2600.00
• Stain on floor in bedroom #2	\$2000.00
• Dishwasher dented	\$1000.00
• Refrigerator tray	\$100.00
• Patio door screen	\$100.00
• Holes in living room walls	\$1000.00
• Holes in walls in master bedroom	\$1000.00
• Missing paint in bedroom #2	\$1000.00
• Missing paint in bathroom	\$1000.00
• Missing paint in bedroom #3	\$1000.00
• Master bedroom door.....	\$500.00
• Cleaning	\$300.00
Total.....	<u>\$17,600.00</u>

Flooring

11. With their application, the landlords submitted photographs showing the laminate flooring in the living room and kitchen. Landlord1 pointed out that there were several scratches on the floor in the living room and there was a pink stain on the floor in the kitchen which cannot be removed. The landlords also pointed to a photograph showing that there is also a scratch on the floor in the master bedroom, and more staining on a floor in bedroom #2. The landlords are seeking to have these floors replaced. With respect to the costs they are claiming here, the landlords submitted a receipt from a contractor in which he states that he would charge the landlords \$19,377.50 to "repair damages" at the rental property. They also submitted a text-message from that contractor in which he writes that the flooring would cost \$7000.00, that he would charge \$2000.00 to lay those floors, \$600.00 to remove the damaged flooring, and new baseboards would have to be purchased at a cost of \$1300.00.

Dishwasher dented

12. Landlord1 pointed to her photographs show that there is a dent in the door on the dishwasher, and she also claimed that an "inside strip" is broken. The landlord is seeking \$1000.00 in compensation for this damage. That dishwasher has not been repaired and no receipts or quotes were submitted with her application.

Refrigerator tray broken

13. Landlord1 also pointed to a photograph showing that there is a hairline crack in one of the trays in the refrigerator. That tray has not been replaced and no quote or receipt was submitted with her application.

Patio door screen

14. The landlords also submitted a photograph showing that there were several holes in the screen to the patio door, which landlord1 claimed had been caused by the tenant's dog. That screen has not been repaired and no receipts or quotes were submitted with the application.

Painting

15. Landlord1 stated that according to their rental agreement, the tenant was only permitted to insert 3 picture hooks per wall in the rental unit, and if he wanted to insert any more than that amount, he was required to obtain written permission from the landlords. She testified that the tenant never did seek permission to put any more hooks n the walls, but she claimed that in the living room alone, there were about 30 holes. She also claimed that the tenant was not only using picture hooks, but he had also used large nails and screws. Landlord1 also complained that in several rooms, including the bathrooms and the bedrooms, the tenant had put sticky adhesives on the walls, and when they were removed, the tenant had also removed some paint and plaster from these walls. Because of this damage, the landlords now have to repaint the whole unit, and they pointed to the submitted breakdown from their contractor in which he quotes them a price of \$5500.00 to have that work carried out. The rental unit was last painted in 2018.

Master bedroom door

16. Another of the landlords' photographs show that there is a crack in the master bedroom's colonial door. Her quote from her contractor states that it would costs \$250.00 for a replacement door.

Cleaning

17. Landlord1 testified that, after the tenant moved out, she was required to spend 2.5 days cleaning the unit. She stated that she was required to clean all 3 bathrooms, and she pointed to her photographs showing that the toilets were dirty and that there was garbage left behind. She also claimed that the laundry

room was very messy, and she stated that she had to clean laundry detergent off of the washing machine, and there was dirt and debris under the washing machine and the dryer. In the kitchen, landlord1 stated that she had to clean out the oven and the stovetop, the refrigerator and the freezer, and she testified that the cupboards had to be cleaned out. She also testified that all the floors in the unit had to be cleaned as well. The landlord is seeking \$300.00 in compensation for her personal labour.

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. With respect to the floors, the landlords submitted evidence to establish that there are some scratches on the floors in the living room and master bedroom, and that there are 2 stains on these floors, one in the kitchen and one in bedroom #2. Because of that damage, the landlords are seeking to have all the floors, on both levels of the house, replaced, and they are seeking \$10,900.00 + tax in compensation, as per the submitted quote. I am of the view that this claim is excessive and not proportionate to the damage identified in the photographs. In particular, I was not satisfied that the landlords had established that there was any damage caused to the floor in the master bedroom, as the 1 submitted photograph showing a scratch on that floor is actually a photograph of the living room floor. With respect to the living room floors, although I do agree that there are some scratches here, some of those could be attributed to normal wear and tear, which landlords ought to expect. Nevertheless, some of the scratches could be regarded as exceeding that standard of normal use, and I would say the same about the stains found in the kitchen and bedroom #2. Bearing in mind that the landlords have not replaced these floors, and that this minor damage has not prevented the landlords from securing new tenants, I find that an award of \$1000.00 is reasonable, to compensate for the floors' accelerated depreciation in the living room, kitchen and bedroom #2.
20. With respect to the dishwasher, the patio screen, and the tray in the refrigerator, I accept the landlords' testimony and evidence which shows that these items were damaged during this tenancy. However, the landlords submitted no receipts or estimates with their application to establish the costs of repairing these items. As such, those claims do not succeed.
21. Regarding the condition of the walls, I accept the evidence submitted by the landlords showing that the tenant had put numerous holes in the walls, contrary to what is stipulated in the lease, and that some paint had peeled away after he had removed adhesives from the walls. Policy with this Section is that it is expected that landlords would be required to repaint the walls in a rental unit every 3 to 5 years, as a result of normal wear and tear. As this unit was last painted in 2018, these walls would soon have to be repainted anyhow. As such, this portion of the landlords' claim also fails.
22. The landlords' evidence shows that there is a crack in the master bedroom door, and I therefore agree that they are entitled to the costs of replacing it. The submitted quote states that it would cost \$250.00 + tax, or 287.50, to replace it. As an interior colonial door has an expected lifespan of 20 years, I find that the landlords are therefore entitled to a depreciated award of \$215.63 (\$287.50 x 15/20).
23. I also agree with the landlords that the unit required cleaning after the tenant moved out, and I find that \$300.00 in compensation for 2.5 days of labour is fair.

Decision

24. The landlords' claim for compensation for damages succeeds in the amount of \$1515.63, determined as follows:

• Flooring	\$1000.00
• Bedroom door	\$215.63
• Cleaning.....	\$300.00
Total.....	<u>\$1515.63</u>

Issue 2: Rent - \$5008.00

Relevant Submissions

25. Landlord1 stated that the tenant's rent was paid and up-to-date for the period ending 30 September 2022, the day this tenancy was set to end. However, during that month, the tenant had requested that he be allowed to stay on for the month of October 2022, as well, which they agreed to, but the landlords complained that the tenant only paid \$992.00 in rent for that month, leaving a balance of \$2008.00.

26. The landlords also complained that because of the condition the tenant had left the unit in, they were unable to rent it for the month of November 2022. Landlord2 testified that after they had the unit cleaned up, they started advertising it for rent again on Facebook Marketplace and through their realtor, and they were able to secure new tenants for 01 February 2023. In addition to the rent owing for October 2022, the landlords are also seeking compensation for the loss of rental income they had suffered during the month of November 2022, \$3000.00, for a total claim of \$5008.00.

Analysis

27. I accept the landlords' claim that the tenant had only paid \$992.00 in rent for October 2022, and based on the photographs submitted by the landlord showing the condition the tenant had left the unit in when he had vacated, I also agree with them that they would not have been able to put new tenants in the unit for November 2022. As such, the landlords' claim succeeds in the amount of \$5008.00, as claimed.

Decision

28. The landlords' claim for a payment of rent succeeds in the amount of \$5008.00.

Issue 3: Late Fees - \$75.00

29. The landlords have assessed late fees in the amount of \$75.00.

Analysis

30. 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.

31. As the tenant has been in arrears since 02 October 2022, the landlords are entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

32. The landlords' claim for late fees succeeds in the amount of \$75.00.

Issue 4: Security Deposit

33. The landlords stated that the tenant had paid a security deposit of \$1500.00 on 01 December 2019. As the landlords' claim has been successful, they shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

34. The landlords are entitled to the following:

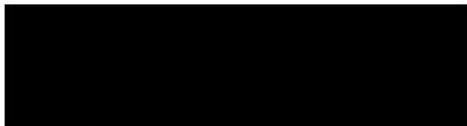
- a) Compensation for Damages \$1515.63
- b) Rent \$5008.00
- c) Late Fees \$75.00

d) LESS : Security Deposit..... (\$1500.00)

e) Total Owing to Landlords \$5098.63

04 April 2023

Date


John R. Cook
Residential Tenancies Tribunal