

Residential Tenancies Tribunal

Application 2023 No. 310NL

Decision 23-0310-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 06 June 2023 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 a payment of \$8859.24 in compensation for damages,
 - An order for a payment of rent in the amount of \$4450.00,
 - An order for a payment of late fees in the amount of \$75.00, and
 - Authorization to retain the \$600.00 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 are sections 15 and 19 of the *Residential Tenancies Act, 2018*, 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 there was no available number where he could be reached 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 his application, the landlord submitted an affidavit stating that tenant had been served with the application, by e-mail, on 24 May 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.

Issue 1: Compensation for Damages - \$8859.29

Relevant Submissions

7. The landlord stated that he had entered into a monthly rental agreement with the tenant in April 2017. In 2017, the tenant was residing in the basement unit at the complex, and in 2020, he moved into the upstairs unit. The agreed rent was set at \$1000.00 per month and the landlord stated that the tenant had paid a security deposit of \$600.00.
8. On 07 May 2022, the landlord issued the tenant a termination notice and he vacated the property during the first week of June 2022.
9. The landlord stated that when he regained possession of the property, he discovered that the tenant had caused significant and deliberate damage to almost all of the rooms throughout the apartment. Most of that damage has now been repaired, and with his application, the landlord submitted a breakdown of these damages, 22 photographs showing the damage to the various rooms, as well as 25 receipts for a costs of purchasing materials to carry out the required repairs.

Bathroom vanity

10. Two of the landlord's submitted photographs show that the door to the bathroom vanity had been torn off of its hinges, and he pointed out that the MDF boards were so badly damaged that it could not be repaired. The landlord has since had this vanity replaced and he submitted a receipt showing that he was charged \$356.49 for a replacement and he pointed to another receipt showing that he was charged \$65.54 + tax for a new faucet. The landlord also complained that this replacement vanity was white and it did not match the mirror and the medicine cabinet, as they were both an espresso colour. Accordingly, he had to replace that mirror and medicine cabinet, and he pointed to another receipt showing that he was charged \$49.99 + tax for the mirror and \$167.00 + tax for the medicine cabinet. The landlord also testified that he had hired a plumber to install the vanity, but no receipt was submitted with his application.

Painting

11. The landlord also complained that he was required to paint the unit after the tenant vacated. He testified that during his tenancy, the tenant had asked permission to paint the walls a different colour, and he agreed, on the condition that they were returned to the same colour before he vacated. The landlord claimed that the tenant had painted the walls bright red and blue and he had not repainted before vacating. With his application, the landlord pointed to 2 receipts showing that he had paid a total on \$538.42 in painting supplies. The landlord is also seeking compensation for the labour he exerted in painting the unit, but he was unable to say how long it took him to complete this work. The landlord testified that this unit was last painted in 2017.

Refrigerator

12. The landlord submitted 3 photographs showing the condition of the refrigerator after the tenant moved out, and he pointed out that it was extremely dirty and that there was a large amount of black mold growing in both the main refrigerator and the freezer. These photographs also show that there were several punctures in the door of the refrigerator which the landlord had claimed were caused by a knife. The landlord has since replaced this refrigerator and he submitted a receipt showing that he was charged \$1115.50 for a replacement. The landlord stated that this refrigerator was at least 10 years old.

Stove

13. The landlord also stated that he was required to replace the stove at the unit too, and another one of his submitted receipts shows that he was charged \$688.85. The landlord pointed to his photographs which show that the oven door was badly dented and that the glass in that door was also missing. The landlord testified that he had purchased that refrigerator in 2017, about 3 years before the tenant moved into the apartment.

Kitchen cupboards

14. Another of the landlord's photographs shows the kitchen cabinets, and the landlord pointed out that most of the cabinet doors were missing or had been destroyed. The landlord purchased new cabinet doors for the kitchen and he submitted a receipt showing that he was charged \$2067.36, and a second receipt shows that she was charged \$275.28 for primer, paint and hinges for these doors. The landlord stated that these cabinets were original to the house, which was built in 1982. The landlord stated that although they have been purchased, he has not yet installed them.

Back deck

15. The landlord stated that during his tenancy, the tenant was storing beer bottles on the back deck and he also complained that the tenant never removed snow

from the deck during the winter. Because of this excess weight, the deck dipped in one corner and had to be repaired. The landlord also pointed to his photographs of this deck showing that numerous palings had been kicked out. With his application, the landlord submitted 2 receipts, totalling \$110.08 for the supplies needed to repair the deck, and he testified that it had taken him a couple of days to carry out that work. The landlord stated that this deck was at least 10 years old.

Shed window

16. Another of the landlord's photographs show that the window in the shed was broken out, and he pointed to another receipt showing that he was charged \$279.00 + tax for a replacement. The landlord stated that he did not know the age of the window and that it was already there when he purchased the unit 10 years ago.

Doors

17. The landlord also testified that he had to replace 4 interior doors at the unit. He stated that the door to the master bedroom was missing altogether, and he submitted a receipt showing that he was charged \$221.00 + tax for a replacement, and he also pointed to a second receipt showing that he had paid \$47.09 + tax for a door handle. The landlord also stated that the door to the bathroom was completely destroyed, and he pointed to a photograph showing that there were numerous holes in that door. A second receipt shows that the landlord was charged \$194.00 + tax to replace that door. The submitted photographs also show that 2 closet doors also had numerous holes in them, and the submitted receipt shows that their replacements cost \$110.00 + tax each. The landlord stated an additional door handle was missing, for which he paid \$38.99 + tax, and the handles to the other doors in the unit also had to be replaced as they did not match the 2 he had purchased. His receipts show that he was charged another \$171.96 + tax for 5 additional door handles. In addition to these 4 doors, the landlord also had to replace the hardware on 2 other bi-fold closet doors, and his receipt shows that he had charged \$24.99 + tax for each one. These doors were at least 10 years old.

Baseboard heater

18. Another of the landlord's photographs show that a baseboard heater had its cover removed and all the heating fins inside were twisted and bent. He pointed to a receipt showing that he was charged \$76.89 + tax for a replacement, and he also stated that he was required to install a new thermostat for this new heater, and another receipt shows that he was charged \$67.95 + tax. The landlord testified that he installed this heater 10 years ago when he purchased the unit.

Kitchen faucet

19. The landlord also pointed to a photograph of the kitchen faucet showing that it had been taken apart by the tenant and he stated that it was no longer working. He also complained that the soap dispenser was broken. That faucet had to be replaced and with his application the landlord had submitted a receipt showing that he had paid \$229.99 for a replacement. That faucet was at least 10 years old.

Handrail

20. Another photograph shows that the handrail in the stairwell was broken and it was also replaced by the landlord. His receipts show that he purchased a replacement at a cost of \$112.72 and he purchased 4 brackets at a cost of \$16.09 + tax each. The landlord stated that this handrail was original to the house, which was built in 1982.

Smoke alarms

21. The landlord also complained that all of the smoke alarms that he had installed in the house 10 years ago were missing, and he pointed to his receipts showing that he had purchased 2 new ones at a cost of \$99.97 + tax.

Kitchen floor

22. The landlord submitted another photograph showing the vinyl cushion floor in the kitchen, and he pointed out that there was a large circular burn in that floor, in the shape of an element from the stovetop. That floor has since been replaced and the landlord submitted a receipt showing that he had paid \$404.42 for new flooring for that room. He stated that this floor was at least 10 years old, as it was already in the house when he purchased it.

Labour

23. The landlord is also seeking \$2094.05 in compensation for 96.5 hours of his personal labour to carry out these repairs at unit. With his application he submitted a log, showing how many hours he had worked per day at the rental unit to complete this work.

Analysis

24. 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*

25. The evidence submitted by the landlord clearly shows that the tenant had caused significant and deliberate damage to the property. With respect to the vanity, I agree with the landlord that he was required to have it replaced and that a new faucet had to be installed. A bathroom vanity has an expected life span of 20 years, and given that this one was at least 10 years old, I find that he is entitled to a depreciated award of \$215.90 $((\$356.90 + \$65.54) \times 10/20)$. The tenant had caused no damage to the mirror or the medicine cabinet, and I therefore find that the landlord is not entitled to those replacement costs.
26. With respect to the costs of painting the unit, as it is expected that a landlord would have to repaint a rental unit every 3 to 5 years anyhow, to address issues of normal wear and tear, I find that this is likely something that the landlord would soon have had to do anyhow. Hence that claim does not succeed. I reach the

same conclusion about the kitchen cabinets. As these cabinets were installed in 1982, and as kitchen cabinets have an expected lifespan of 20 years, they were probably coming to the end of their useful life anyhow.

27. The refrigerator was clearly in a deplorable state and I agree that it needed to be replaced. As refrigerators have an expected life span of 12 years, the landlord is entitled to a depreciated award of \$185.92 ($\$1115.50 \times 2/12$). I also agree with the landlord that the stove was damaged and needed to be replaced. Stoves also have an expected lifespan of 12 years, and I therefore find that the landlord is entitled to \$401.83 ($\$688.85 \times 7/12$).
28. The landlord's photographs also show that the tenant had caused deliberate damage to the palings on the deck. A wooden deck has an expected lifespan of 15 years, and given that it probably took 8 hours to repair, I find that the landlord is entitled to \$94.56 ($(\$110.08 + \$173.60 (\$21.70 \times 8 \text{ hours})) \times 5/15$). I also find that he is entitled to \$203.83 for the costs of replacing the window in the shed, which likely had another 10 years left in its lifespan ($(\$320.85 (\$279.00 + \text{tax}) + \$86.80 \text{ for 4 hours of labour}) \times 10/20$).
29. Regarding the doors, the landlord's evidence shows that one of these doors was missing and that several others were heavily damaged. Interior doors have an expected lifespan of 20 years, and as these doors were at least 10 years old, I find that the landlord is entitled to \$530.16 for the costs of replacing 4 doors, 2 door handles, and the costs of repairing 2 others. I have also allowed 8 hours of labour to carry out that work ($\$886.72 (\$221.00 + \$47.09 + 194.00 + \$110.00 + \$110.00 + \$38.99 + \$24.99 + 24.99 + \text{tax}) + \$173.60 \text{ for labour} \times 10/20$). The 5 door handles the landlord had replaced were not damaged by the tenant, so that claim does not succeed.
30. Clearly, the baseboard heater also needed to be replaced. It had 15 years left in its lifespan and I also award the landlord compensation for 2 hours of his labour to install it—\$79.09 ($\$88.42 (\$76.89 + \text{tax}) + \$43.40 \text{ for labour} \times 15/25$). The landlord's claim for the cost of the thermostat does not succeed, though, as these devices are only expected to last 10 years anyhow. The same goes for the smoke detectors.
31. I also find that the landlord's claims for the kitchen faucet, which has a 10 year life expectancy, the handrail (20 years) and the kitchen floor (10 years) all fail as each of these items had also outlived their lifespan.

Decision

32. The landlords' claim for compensation for damages succeeds in the amount of \$1711.29, determined as follows:

• Bathroom vanity	\$215.90
• Refrigerator	\$185.92
• Stove	\$401.83

• Deck.....	\$94.56
• Shed window.....	\$203.83
• Doors	\$530.16
• Baseboard heater.....	\$79.09
Total.....	<u>\$1711.29</u>

Issue 2: Rent - \$4450.00

Relevant Submissions

33. With his application, the landlord submitted a copy of his rental records for the period from January 2022 through to July 2022. The monthly rent is set at \$1000.00 per month, but according to these records, the tenant only made 4 rent payments during this period—2 payments in February 2022, totalling \$1600.00, and payment of \$750.00 on 03 April 2022, and a final payment of \$600.00 on 01 May 2022.
34. The landlord stated that he allowed the tenant to remain at the unit for the first week of June 2022, and he charged him a prorated of \$300.00 for that week. With that \$300.00, the landlord calculates that the tenant was carrying rental arrears in the amount of \$2350.00 when he vacated.
35. The landlord also claimed that because of the damages that the tenant had caused, he was not able to rent the unit for the months of June and July 2022, and he suffered a loss of rental income for those months. According to his rent records, the landlord is seeking \$1200.00 for each of those 2 months in compensation for that loss of rent, but at the hearing, he stated that he was now only seeking \$1000.00 per month.

Analysis

36. I accept the landlord's claim that the tenant had not paid his rent, as required, since the start of January 2022. Based on the landlord's records, the tenant had only paid a total of \$2950.00 for the period ending 31 May 2022, leaving him with a balance of \$2050.00 on that date (\$5000.00 - \$2950.00).
37. With respect to the rent for June and July 2022, I agree with the landlord that because of the extent of the damages caused by the tenant, it would have been next to impossible to have the unit cleaned and repaired in time to get new tenants for July 2022. As such, I find his claim for compensation for lost rental income for June and July 2022 also succeeds in the amount of \$2000.00.

Decision

38. The landlord's claim for a payment of rent succeeds in the amount of \$4050.00.

Issue 3: Late Fees - \$75.00

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

Analysis

40. 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.

41. As the tenant has been in arrears since January 2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 4: Security Deposit

43. The landlord stated that the tenant had paid a security deposit of \$600.00 and with his application he submitted a receipt showing that that deposit was paid on 01 April 2017. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses

44. The landlords paid a fee of \$20.00 to file this application and he pointed to a receipt showing that he paid \$46.00 for 2 flash drives in order to submit his

evidence. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

Summary of Decision

45. The landlord is entitled to a payment of \$5302.29, determined as follows:

a) Compensation for Damages	\$1711.29
b) Rent	\$4050.00
c) Late Fees.....	\$75.00
d) Hearing Expenses	\$66.00
e) LESS : Security Deposit.....	<u>(\$600.00)</u>
f) Total Owing to Landlord.....	<u>\$5302.29</u>

22 June 2023

Date


John R. Cook
Residential Tenancies Tribunal