

Residential Tenancies Tribunal

Application 2023 No. 328NL
Application 2023 No. 363NL

Decision 23-0328-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:03 PM on 24 July 2023 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED]
[REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED]
[REDACTED] hereinafter referred to as "the tenant", was also attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of \$1160.11 in compensation for damages,
 - An order for a payment of \$201.65 in compensation for inconvenience, and
 - Authorization to retain the \$712.00 security deposit.
4. The tenant is seeking the following:
 - An order for refund of a \$712.00 security deposit, and
 - An order for a refund of rent in the amount \$379.92.

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 decision is policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

7. This is the second hearing this Tribunal has conducted concerning this tenancy. The first hearing, concerning applications 2023 No. 200NL and 2023 No. 278NL, was heard on 05 April 2023. As a result of that hearing, an order was issued on 11 April 2023 in which the tenant was required to vacate the rented premises.
8. The landlord called the following witness:
 - [REDACTED] ("[REDACTED]") – occasionally works for landlord
9. The tenant called the following witnesses:
 - [REDACTED] ("[REDACTED]") – friend of tenant

Issue 1: Compensation for Damages - \$1160.11

Relevant Submissions

The Landlord's Position

10. The landlord and the tenant entered into a monthly rental agreement on 01 October 2022, and a copy of that executed agreement was submitted with the landlord's application. The agreed rent was set at \$950.00 per month, and it is acknowledged in that agreement that the tenant had paid a \$712.00 security deposit.
11. The landlord stated that when this tenancy commenced, she did a walkthrough with the tenant and a rental premises condition report was filled out at that time and signed by the tenant. She later claimed that the report was not signed by the tenant, but was in fact signed by the previous resident of that apartment.
12. As indicated in Preliminary Matters, above, as a result of a hearing which was held on 05 April 2023, the tenant was ordered to vacate the rented premises, and he testified that he moved out on 18 April 2023, after receiving that order. There was no report of any outgoing inspection.
13. The landlord complained that after the tenant moved out she was required to clean the apartment, and she was also required to carry out some plastering and painting.

Plastering and painting

14. The landlord testified that the unit was last painted in July 2022, and she claimed that she had to repaint it again after the tenant moved out in April 2023. She testified that there was grease all over the walls in the kitchen that could not be cleaned off, and she stated that there were marks on the walls in the living room and in the master bedroom, which she claimed were caused by the tenant moving his furniture. She also stated that there were spaghetti noodles on the

walls and the baseboards in the master bedroom, and a chunk was taken out of the wall in the living room. The landlord's witness, ■, corroborated the landlord's claim that the walls were dirty after the tenant moved out, and stated that they required an extensive cleaning before they could be painted.

15. In support of her claim, the landlord submitted photographs showing the condition of the unit after the tenant moved out, and she also submitted a quote, dated 05 July 2023, from the Paint Shop, for \$730.11 for the costs of purchasing 12 gallons of paint. The landlord stated that the original receipt for the paint was submitted to this Section but it had been misplaced, along with the incoming condition report. She also stated that the Paint Shop has had a glitch with their software and they were unable to locate a record of the original purchase.

Cleaning

16. The landlord also complained that the unit had not been adequately cleaned before the tenant moved out, and she stated that everything needed cleaning. This was also corroborated by ■. She claimed that it took 2 days to scrape the dirt off the floor, and she was required to clean the dining room, the refrigerator and stove, the bathroom, the living room, the windows and the window frames.
17. The landlord testified that she had carried out some of this work, and she had also hired 2 other people to assist her. With respect to the work that she had carried out cleaning, the landlord testified that she did that work over a period of 3 days. No receipts were submitted for the costs she had incurred to hire these other 2 cleaners. The landlord is seeing \$430.00 in compensation.

The Tenant's Position

18. The tenant stated that he had not signed any condition report when he moved into the unit, and no walkthrough was conducted when he moved out.

Plastering and painting

19. The tenant claimed that the unit did not require painting after he had moved out. He claimed that he had cleaned and mopped the whole unit before he vacated, and with his application, he submitted a video he had taken as he was leaving his unit on 18 April 2023. The tenant's witness, ■, argued that the tenant only lived in a small apartment and it would not have taken 12 gallons of paint to repaint that unit.

Cleaning

20. The tenant claimed that he had cleaned the apartment before he vacated. He again pointed to his submitted video, taken on 18 April 2023, as he was moving out, showing that the unit was clean on that date. ■ testified that she had seen pictures of the unit after the tenant had moved out, and she stated that the unit was completely clean and that there was no mess left behind.

Analysis

21. 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*

22. With respect to the plastering and painting, I am only able to identify 2 photographs submitted by the landlord which show the condition of the walls in the property, and these photographs do show that there are some scuffs on the walls. But this damage seems to me to be minor, and I am not persuaded that

this would require that the whole unit be repainted. Furthermore, as there was no report of an incoming inspection, I also find that the landlord had failed to establish that these scuffs and marks occurred during this tenancy. Additionally, I find that the landlord had failed to establish that she had spent \$730.11 for paint for this unit. Only a quote was submitted with her application, and I agree with [REDACTED] that it probably would not have taken 12 gallons of paint to repaint this unit. Hence that portion of the landlord's claim does not succeed.

23. With respect to the cleaning, the landlord's photographs do show that the oven is dirty, that the pots under the elements contain food, and that there are some crumbs in the refrigerator. The tenant did submit a video showing the condition of the property, too, on 18 April 2023, but during the walkthrough of the kitchen, the video quality was quite blurry. I conclude, then, that the unit was not perfectly cleaned, and, based on the submitted photographic and video evidence, I find that the landlord is entitled to compensation for 4 hours of her personal labour. Policy with this Section is that an applicant may claim up to \$22.50 per hour for their labour, so this claim succeeds in the amount of \$90.00.

Decision

24. The landlord's claim for compensation for damages succeeds in the amount of \$90.00.

Issue 2: Compensation for Inconvenience - \$201.65

Relevant Submissions

The Landlord's Position

25. The landlord stated that this portion of her claim concerns the fact that she was unable to rent the unit until 01 May 2023.
26. When I pointed out to her that the tenant had paid his full \$950.00 rent for April 2023, and that she had not suffered a loss of rent for that month, she stated that she did not know what this portion of her claim was for. She speculated that it was maybe a claim for her labour and time, or that it was for the costs of purchasing gasoline while she was running around getting supplies for the repairs. A receipt for gas for \$118.00 was submitted with her application.

The Tenant's Position

27. The tenant argued that the landlord should not be compensated for the costs of gasoline as there were no damages at the unit when he moved out and it had been cleaned.

Analysis

28. It was not clear to me, nor to the landlord herself, what this claim concerned. But if it was for rent, it does not succeed as the landlord suffered no loss of rental income for April 2023. I have already awarded the landlord for the costs of her personal labour in the previous section, so this claim does not succeed for that reason either. I also agree with the tenant that the landlord had not made out why it was she needed to spend \$118.00 in gasoline.

Decision

29. The landlord's claim for compensation for inconvenience does not succeed.

Issue 3: Refund of Rent - \$379.92

Relevant Submissions

The Tenant's Position

30. The tenant stated that after he had received the Order of Possession from this Section, he was informed that the Sheriff would be coming to his unit on 19 April 2023 to oust him from the apartment and change the locks. The tenant therefore vacated the unit on 18 April 2023.
31. The tenant argued that as he was forced to move out the unit by the Sheriff, he should not have to pay any rent after 18 April 2023. The tenant's rent for April 2023, \$950.00, had been paid in full, and he calculated that he is therefore entitled to a refund of \$379.92.

The Landlord's Position

32. The landlord stated that the unit was not ready to be moved into on 19 April 2023, and she was required to carry out some painting and cleaning. She testified that she had advertised the unit immediately after the tenant had moved out, and she was only able to secure new tenants for 01 May 2023.

Analysis

33. In the previous hearing, held on 05 April 2023, it was determined that the landlord had issued the tenant a valid termination notice on 01 January 2023, and he ought to have vacated the property on 31 March 2023. The tenant did not comply with that notice, as required, and the landlord had to resort to filing an application with this Tribunal for an Order of Possession.
34. Although the tenant moved out on 18 April 2023, I find that it would have been very unlikely that the landlord would have been able to put a new tenant into that property on the following day, or anytime prior to 01 May 2023. Because the

tenant did not comply with the original termination notice, I find that he is responsible for rent for the whole month of April 2023.

Decision

35. The tenant's claim for a refund of rent does not succeed.

Issue 4: Security Deposit

36. The tenant paid a security deposit of \$712.00 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim for compensation for damages has been partly successful, that deposit shall be disposed of as outlined in this decision and attached order.

Issue 5: Hearing Expenses

37. The tenant paid a fee of \$20.00 to file this application. Policy with this Section is that the party that receives an award shall have their hearing expenses awarded also. But it is also policy that where the award is less than the amount of the security deposit, the filing fee cannot be claimed. As such, the tenant's claim for hearing expenses does not succeed.

Summary of Decision

38. The tenant is entitled to a payment of \$622.00, determined as follows:

- a) Refund of Security Deposit \$712.00
- b) LESS : Compensation for Damages (\$90.00)
- c) Total Owing to Tenant..... **\$622.00**

18 August 2023

Date

John R. Cook
Residential Tenancies Tribunal