

Residential Tenancies Tribunal

Application 2023 No. 579NL

Decision 23-0579-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 AM on 26 July 2023 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED] ("[REDACTED]"), [REDACTED] ("[REDACTED]") and [REDACTED] ("[REDACTED]").
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2", respectively, were also in attendance.

Issues before the Tribunal

4. The landlords are seeking the following:
 - An order for a payment of \$1280.65 in compensation for damages,
 - An order for a payment of rent in the amount of \$1015.00,
 - An order for a payment of late fees in the amount of \$19.00,
 - An order for a payment of "other expenses" totalling \$256.13, and
 - Authorization to retain the \$656.25 security deposit.

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 are sections 10 and 18 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Compensation for Damages - \$1280.65

Relevant Submissions

The Landlords' Position

7. █ stated that she had entered into a 1-year, fixed-term rental agreement with the tenants, commencing 01 June 2022, and a copy of the executed lease was submitted with her application. The agreed rent was set at \$875.00 per month, and it is acknowledged in the lease that the tenants had paid a security deposit of \$656.25.
8. On 23 May 2023 the tenants issued the landlord a termination notice, and a copy of that notice was submitted with the landlord's application. That notice was issued under section 18 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 30 June 2023. The tenants vacated 1 month earlier, on 30 May 2023.
9. █ stated that after the tenants vacated, she was required to repaint the apartment and some cleaning was required as well. She submitted an invoice with her application with the following breakdown of the costs she had incurred to have that work carried out:
 - Maintenance supplies \$238.45
 - Labour for maintenance \$591.12
 - Labour for cleaning \$451.08
 - Total \$1280.65

Painting

10. █ stated that the rental unit was last painted in 2022, just before the tenants moved in. She stated that after the tenants moved out, she found that there was a lot of dirt on the walls, and she stated that it appeared that some substance was thrown at the walls. █ also complained that there were some areas of the walls that were damaged and those areas required plastering. In support of her claim, the landlord pointed to her submitted photographs showing the condition of the walls when the tenants moved out. She also pointed to the incoming and outgoing condition report, in which the walls are listed in good shape in 2022, but they are noted as being damaged on move out.
11. The landlord is seeking \$238.45 for the costs of purchasing painting supplies. No receipt was submitted with her application. She is also seeking \$591.12 in compensation for 14 to 16 hours of labour to complete that work. That work was carried out by her maintenance staff.

Cleaning

12. █ stated the whole apartment also needed cleaning after the tenants moved out. She stated that all of the appliances were dirty, and that there was dirt and dust on all of the baseboards. She complained that the cupboards were dirty, inside and out, and that food had been left behind, as well as some garbage. She also stated that the bathroom was very dirty, and she pointed to her photographs showing that there was urine and pubic hair left on the toilet. █ also testified that the ceiling fan was covered in dirt and dust, and that there were black marks on the walls in the bathroom that could not be cleaned.
13. █ testified that she had hired 3 cleaners to clean the apartment, and they were at the unit for 2 days, for 7.5 hours each day. She is seeking \$451.08 in compensation for the costs of hiring these cleaners. No receipt was submitted with her application.

The Tenant's Position

Painting

14. Tenant1 stated that the dirt and damage on the walls that █ had complained about should be attributed to normal wear and tear. He also denied that he had thrown any substance at the walls during their tenancy.

Cleaning

15. Tenant1 claimed that there was already dirt on the cupboards when they moved in, and he pointed to his photographs showing these cupboards at that time, and he claimed that the dirt had been painted over. He also complained that there were stains and tread marks on the floors, that the blinds were broken, and that a crank for a window did not work. With respect to the bathroom, tenant1 claimed that a couple of months before the tenancy ended, there was a plumbing issue in the unit and there was a flood in the bathroom which had caused some damage, and had even damaged the unit below.
16. Tenant1 acknowledged that some garbage and cleaning supplies had not been removed prior to the outgoing inspection, as seen in the landlord's photographs, but he claimed that these items were removed once the inspection was complete.

Analysis

17. 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*

18. The outgoing condition report indicates that the walls were damaged when the tenancy ended in May 2023, and by signing that report I find that the tenants agreed with that assessment. Based on that report and the submitted photographs, I agree with the landlord that the unit needed to be repainted. However, no receipts were submitted for the costs of painting supplies, so I make no award for that claim. Regarding the labour costs, policy with this Section is that a landlord may claim up to \$22.50 per hour for their personal labour. I therefore find that the landlord is entitled to \$360.00 (\$22.50 per hour x 16 hours).
19. With respect to the cleaning, I also agree with the landlord, based on her photographs and on the inspection report, that the unit had not been adequately cleaned before the tenants moved out. No invoice was submitted from the

landlord's cleaner, but based on the submitted evidence, I find that compensation for 8 hours of labour is fair: \$180.00.

Decision

20. The landlord's claim for compensation for damages succeeds in the amount of \$540.00 (\$360.00 + \$180.00).

Issue 2: "Other" Expenses

Relevant Submissions

The Landlord's Position

21. [REDACTED] pointed to Schedule "B" of her submitted lease which lists a number of charges for which the tenants would be billed if the rental unit is not returned to the landlord in the same condition as it was when the tenants moved in. These include charges for the cleaning of appliances, replacing light bulbs or stove elements, etc., and charges for wall repairs—including painting—and floor repairs.
22. Besides these itemized charges, Schedule "B" also states: "All charges are subject to HST as well as a Northview administration fee of 20%".
23. The landlord is seeking a payment of that administration fee, and she calculates that fee as 20% of the claim for damages made in the previous section: \$256.13.

The Tenants' Position

24. Tenant1 argued that the 20% fee was arbitrary, and he stated that he could not see how it was that the landlord had incurred over \$200.00 in order to contact her maintenance workers and to hire cleaners.

Analysis

25. I accept the landlord's claim that the lease states, in Schedule "B", that the tenants agree to pay a 20% administrative fee should there be any charges incurred for damages or cleaning.
26. As I have found that the landlords are entitled to \$540.00 in compensation for damages, I therefore also find that the landlord is entitled to \$108.00 as an administrative fee.

Decision

27. The landlord's claim for "other" expenses succeeds in the amount of \$108.00.

Issue 3: Rent - \$1015.00

Issue 4: Late Fees - \$19.00

Relevant Submissions

The Landlord's Position

28. Although the tenants had issued landlord a notice indicating that they were vacating on 30 June 2023, they moved out a month earlier, on 30 May 2023. █ stated that the tenants had not given a proper termination notice that they were moving at the end of May 2023, and she argued that the landlord is therefore entitled to rent, for June 2023, in lieu of proper notice.
29. Regarding the amount of rent being sought here—\$1015.00—DR stated that 10 months prior to the end of this lease, she had sent the tenants a notice of rental increase, effective 01 June 2023, and she gave them the option of renewing the lease for another 1-year term, at a rental rate of \$915.00, or for a 6-month term, at a rate of \$955.00, or on a month-to-month basis, at a monthly rate of \$1015.00. She testified that the tenant's had opted for the month-to-month rate of \$1015.00.
30. █ testified that the unit had sat vacant during June 2023. She stated that they were unable to put anyone into that unit right away as they had to clean and repaint the property. Once that work was completed, the unit was advertised for rent by her leasing agents, and the landlord was only able to get new tenants for 15 August 2023.
31. The landlord is seeking an order for a payment of rent in the amount of \$1015.00 for June 2023 in lieu of proper notice, and the landlord has also assessed a late fee of \$19.00 as the rent for June 2023 has not yet been paid.

The Tenants' Position

32. Tenant1 acknowledged that they had not given the landlord adequate notice that they were moving out at the end of May 2023. He stated that he had visited the landlord's offices on 10 May 2023 and when he informed them of their plans to vacate, he stated that they had told him that if he had paid a \$250.00 fee to them, he would be able to assign their rental agreement, or sublet the apartment.
33. Tenant1 stated that he had decided to assign the agreement, and he posted an advertisement on Facebook Marketplace, and a copy of that advertisement was submitted with his application. He testified that 90 people responded to that advertisement, and he also pointed to several pages of screenshots of his phone showing those responses.
34. Tenant1 stated that one of those prospective renters, T, visited the apartment on 25 June 2023 and she agreed to take over the tenants' rental agreement, even

with the damages the landlord had complained about here. He claimed that T was willing to pay the \$250.00 fee, and she was willing to pay the rent of \$1015.00 for June 2023. Tenant1 stated that he brought T to the landlord's offices, and she was provided with a rental application.

35. Despite the fact that he had found an assignee, on the day after he had brought T to the landlord's office, both tenant1 and tenant2 received separate calls from the landlord informing them that they would not be able to assign their agreement. Tenant1 testified that, when asked, the landlord provided him with no reason as to why they were denying them the option of assigning the agreement, and then the landlord hung up the phone.
36. Tenant1 pointed out that the *Residential Tenancies Act, 2018* states that a landlord cannot arbitrarily prevent the tenant from assigning a rental agreement, and he argued that by not giving him any reasons why they were refusing him, they were indeed acting arbitrarily and in contravention of the Act.
37. Tenant1 also argued that it was hard to believe that the landlord could not have placed anyone in that unit any sooner than 15 August 2023, given that he had 90 responses to one single advertisement. He pointed out that the repairs claimed by the landlord only took 4 days to carry out, and he suggested that had the landlord agreed to work with him, together they could have found a new tenant for that apartment in early June 2023.
38. In response, █ stated that they had not received an application from T to rent the tenants' apartment. She also claimed that on the day that tenant1 visited the landlord's office, it seemed as if he did not grasp her instructions about assigning a lease, and she contended that she felt bullied by tenant1, so much so that security had to be called. █ stated that the process of assigning a lease takes some time, as various checks need to be carried out, and given that the landlord usually has several other assignment applications which need processing, an assignment cannot be done in a day or two.

Analysis

39. With respect to the issue of assigning or subletting rental units, statutory condition 3, set out in section 10 of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

3. Assigning or Subletting Residential Premises - The tenant may assign or sublet the residential premises subject to the written consent of the landlord, and the landlord shall not arbitrarily or unreasonably withhold consent and shall not levy a charge in excess of expenses actually incurred by the landlord in relation to giving consent.

40. I accept the tenants' claim that they had initially been informed by the landlord that, for a fee of \$250.00, they could assign their agreement to a third party. Based on that information, I also accept their claim that they had placed advertisements on Facebook Marketplace and that they had found someone who was interested in taking over their agreement, as an assignee.
41. Although, I accept the landlord's claim that they had not received an assignment application from T, it was the testimony of both of the tenants that on the day after they had visited the landlord's office, the landlord telephoned and informed them that they were no longer permitted to assign their agreement. And according to tenant1, the landlord would not provide him with any reasons as to why they were being denied the opportunity to assign the agreement. I found that testimony to be believable, and it explains why the tenants had abandoned their plan to assign the agreement, given the efforts they exerted up to that point in advertising the unit and in finding a prospective assignee.
42. I conclude that that refusal to allow the tenants to assign their agreement was arbitrary and unreasonable, and therefore contrary to statutory condition 3, quoted above. I also find it probable that T was willing to move into that apartment, and that had the landlord allowed the assignment, she would not have suffered a loss of rent for June 2023. For this reason, the landlord's claim for rent and late fees does not succeed.

Decision

43. The landlord's claim for rent and late fees does not succeed.

Issue 5: Hearing Expenses

44. The landlord paid a fee of \$20.00 to file this application. Policy with this Section is that where a landlord receives an award, the landlord's hearing expenses will be awarded also. However, with respect the filing fee, it is also policy that if the amount of the award is less than the amount of the security deposit, the filing fee cannot be claimed as a hearing expense. As the landlord's claim has succeeded in the amount of \$648.00, and as the amount of the security deposit is \$656.25, this portion of the landlord's claim does not succeed.

Issue 6: Security Deposit

45. The tenants paid a security deposit of \$656.25 on 18 May 2022, and a receipt for that deposit was submitted with the landlord's application. As the landlord's claim has been partly successful, the deposit shall be disposed of as follows:

a) Refund of Security Deposit \$656.25

b) LESS: Compensation for Damages (\$540.00)

c) LESS: "Other" Expenses (\$108.00)

d) Total Owing to Tenants..... \$8.25

26 September 2023

Date

John R. Cook
Residential Tenancies Tribunal