

## Residential Tenancies Tribunal

Application 2023 No. 636NL  
Application 2023 No. 708NL

Decision 23-0636-00

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:10 AM on 15 August 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. The respondent, [REDACTED] was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord".

### Issues before the Tribunal

3. The tenant is seeking the following:
  - An order for refund of a \$555.00 security deposit,
  - An order for a refund of rent in the amount of \$675.00, and
  - An order for a payment of \$2700.00 in compensation for inconvenience.
4. The landlord is seeking the following:
  - An order for a payment of \$378.33 in compensation for damages, and
  - Authorization to retain the \$550.00 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 is policy 9-3: Claims for Damage to Rental Premises.

## Issue 1: Refund of Rent - \$675.00

### Relevant Submissions

#### The Tenant's Position

7. The tenant stated that she had moved into this rental unit in 2018. In 2021 it was purchased by [REDACTED], and the tenant entered into a 13-month, fixed-term rental agreement with her, commencing 01 February 2021. On 30 November 2021, [REDACTED] hired [REDACTED] a property management company, to take over as landlord.
8. At the time of signing the lease, the rent was set at \$1100.00 per month, and it is acknowledged in the lease that the tenant had paid a security deposit of \$550.00. The tenant stated that the rent increased by \$250.00 on 01 February 2022, but pointed out that in the lease it was agreed that the rent would remain at \$1100.00 through to June 2023.
9. The tenant stated that on 27 April 2023, because of an illness in her family, she informed the landlord that she would be terminating her rental agreement, effective 13 June 2023. In response, the landlord informed her that she could only terminate her agreement on the last day of a month, and, accordingly, on 01 June 2023, she issued the landlord a second termination notice, this time with a termination date of 30 June 2023. The tenant moved out on 13 June 2023 as originally planned.
10. The tenant stated that there were several viewings of her unit after she had given notice, and she testified that she was informed by the landlord's leasing agent that he had clients that were ready to move into the unit for 15 June 2023. She further testified that on 19 June 2023, these clients contacted her directly, and complained that they were having difficulty getting the Wi-Fi connected as her account had not yet been cancelled.
11. The tenant argued that as the landlord had secured new tenants for 15 June 2023, she was entitled to a refund of half the rent she had paid for that month: \$675.00.

#### The Landlord's Position

12. The landlord acknowledged that she had received these 2 termination notices from the tenant.
13. She also testified that she had found new renters and she had entered into a new lease agreement with them, commencing 01 July 2023. The monthly rate of rent is set at \$1500.00. The landlord acknowledged that these new renters did move into the rental unit early, on 21 June 2023, and she testified that she had charged them a pro-rated rent of \$500.00.

14. The landlord calculated, based on the tenant's monthly rent of \$1350.00, and the fact that new tenants took over on 21 June 2023, that the tenant is entitled to a refund of rent for June 2023 in the amount of \$462.40. She also stated that she had already refunded that amount to the tenant on 07 August 2023.

## **Analysis**

15. It is not disputed that the tenant had terminated this agreement, and that this tenancy was to end on 30 June 2023. Although the tenant moved on 13 June 2023, she fulfilled her contractual obligation and paid the landlord the full rent of \$1350.00 for that month.
16. As the landlord had placed new renters in the unit on 21 June 2023, the tenant no longer had use and enjoyment of that unit, and I find that her obligation to pay rent ended on that date. Given that the tenant had paid rent for the last 10 days of June 2023 (21 June to 30 June 2023), I find that the landlord should refund \$450.00 of the rent she had paid for that month ( $\$1350.00 \text{ for June 2023} \div 30 \text{ days} \times 10 \text{ days}$ ).
17. As the landlord had already refunded \$462.50, I find that the tenant is not entitled to any more of a refund.

## **Decision**

18. As the landlord had already paid \$462.50 to the tenant, the tenant's claim for a refund of rent does not succeed.

## **Issue 2: Compensation for Inconvenience - \$2700.00**

### **Relevant Submissions**

#### The Tenant's Position

19. The tenant stated that she was informed when she moved out that her security deposit would be returned to her by 22 June 2023. She claimed that the landlord has yet to return that deposit to her, and she has had to repeatedly call the landlord to inquire about her deposit. She claimed that the refusal of the landlord to return that deposit to her has been very stressful.
20. The tenant also complained that since she moved out, she and her daughter have moved in with her parents. She claimed that the living space is very small and that she has no where to store her items. She also pointed out that her father is a cancer patient, and her residing there is also causing stress to him.
21. With respect to the costs the tenant is seeking here, she stated she is seeking compensation for the rent that she has to pay to her parents and for the costs of

groceries. She also claimed that her daughter has been affected by the move as well and she has had to purchase anxiety medication.

#### The Landlord's Position

22. The landlord stated that the tenant knew months in advance that she would be moving out on 13 June 2023, and she argued that she ought to have had amenities already lined up for that intended move-out date.

#### **Analysis**

23. Much of the stress the tenant complained about seems to have more to do with the fact that she has had to move provinces, and had to move in with her parents to help take care of her ailing father. Undoubtedly, this would be stressful, but I fail to see how the landlord is responsible.
24. Although I accept the tenant's claim that she has made several calls to the landlord inquiring about the status of her security deposit, I was not provided with any compelling reasons why the stress of making those calls would merit an award for \$2700.00.

#### **Decision**

25. The tenant's claim for compensation for inconvenience does not succeed.

### **Issue 3: Compensation for Damages - \$378.33**

#### **Relevant Submissions**

#### The Landlord's Position

26. The landlord stated that the unit had not been adequately cleaned before the tenant vacated, she stated that the tenant had left some items behind that needed to be disposed of, and she also stated that she also had to replace some light bulbs.

#### Cleaning

27. The landlord stated that she had hired █ to clean the apartment after the tenant moved out and she testified that she was charged \$172.50. No receipt or invoice was submitted with her application.
28. The landlord complained that none of the floors in the unit had been swept or mopped before the tenant moved out, and she stated that there was dirt and debris found on the floors. She also testified that the kitchen was very dirty, and she stated that the appliances were dirty, and that the cupboards had not been cleaned out. She also stated that the light fixtures in dining room were dirty. In

support of her claim, the landlord pointed to an inspection report, which included photographs of the unit, compiled on 13 June 2023.

Removal of tenant's items

29. The landlord complained that the tenant had left some items behind at the unit which needed to be collected and removed, and she claimed that it took 2 hours for her maintenance staff to carry out that work and she is seeking \$126.50 in compensation.
30. The landlord pointed to her photographs showing that a box of baking soda had been left in the refrigerator, there were some items left in the cupboard above the refrigerator, some brooms and mops were left in the laundry room, and there were items also left under the deck.

Light bulbs

31. The landlord also complained that 10 light bulbs were burnt out and needed replacing after the tenant moved out. She is seeking \$31.89 for the costs of purchasing those lightbulbs. No receipt was submitted with her application. She also stated that the maintenance staff replaced these bulbs, and she is seeking \$47.44 in compensation for their labour.

The Tenant's Position

Cleaning

32. The tenant claimed that the unit was thoroughly cleaned before she moved out, and she testified that all the floors had been swept and mopped and that the kitchen appliances were cleaned. She also stated that the cupboards were not dirty, as she had mats laid in those cupboards during her tenancy.
33. The tenant also stated that the marks on the walls shown in the landlord's photographs were actually mold, and testified that the previous owner was aware of this issue and had promised to fix it. She also claimed that the stains on the stove and refrigerator were there when she moved in, and she was unable to remove them through cleaning.

Removal of tenant's items

34. The tenant acknowledged that she had left some brooms at the unit. With respect to the items under the deck, the tenant claimed that these items were there when she moved in.

Lightbulbs

35. Regarding the lightbulbs, the tenant exclaimed "I guess I'm in the wrong profession if it costs almost \$50.00 to install lightbulbs!"

## Analysis

36. 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*

37. With respect to the cleaning and the costs of purchasing lightbulbs, the landlord submit no receipts or invoices showing that she had paid the amounts she claimed, and, therefore, those claims do not succeed. I also agree with the tenant that the claim for the labour costs for changing lightbulbs is excessive.

38. Regarding the removal of the items identified in the landlord's photographs, I also find that this claim fails. I accept the tenant's claim that the items under the deck did not belong to her, and were there when she moved in. I am also of the view that the baking soda left in the refrigerator was left as a courtesy, as was the tenant's decision to leave behind cleaning supplies, including the brooms and mop. With respect to the items in the cupboard above the refrigerator, they appear to be pamphlets, and I suspect that they are manuals for the various appliances in the apartment.

#### **Decision**

39. The landlord's claim for compensation for damages does not succeed.

#### **Issue 4: Hearing Expenses**

40. The tenant is claiming \$60.00 as hearing expenses. The tenant paid a fee of \$20.00 to file this application and she testified that she had paid a fee of \$40.00 to have her affidavit notarized. Policy with this Section is that the party that receives an award shall have their hearing expenses awarded also.

41. No receipt was submitted from the notary showing that the tenant had paid \$40.00 for that service, so that claim does not succeed. Regarding the filing fee, it is also policy with this Section that an applicant may only claim that fee as a hearing expense if the amount of the award is greater than the amount of the security deposit. As the tenant has only been awarded the security deposit, see below, the claim for this fee also fails.

#### **Issue 5: Security Deposit**

42. The tenant stated that she had paid a security deposit of \$550.00 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim for compensation for damages has not succeeded, the landlord shall refund the full amount of that deposit, as outlined in this decision and attached order.

18 October 2023

Date

John R. Cook  
Residential Tenancies Tribunal