

Residential Tenancies Tribunal

Decision 19-0977-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:10 am on 22 July 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the landlord", also participated.

Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$600.00.
4. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$300.00,
 - An order for compensation for damages in the amount of \$324.46,
 - An order for a payment of late fees in the amount of \$171.00,
 - An order for "other" expenses totalling \$117.60, and
 - Authorization to retain the 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 case is section 14 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Compensation for Damages - \$324.46

Relevant Submissions

The Landlord's Position

7. The landlord stated that he had entered into a verbal rental agreement with the tenant, commencing 01 September 2020. The agreed rent was set at \$1000.00 and the landlord stated that that rent was due on the first day of each month.
8. In October 2019, the tenant informed the landlord that she wished to terminate their rental agreement and she vacated on 30 November 2020.
9. The landlord stated that when he entered the unit on 01 December 2019, after the tenant had vacated, he discovered that the tenant had caused some damage to a wall in the rented unit. He pointed to photographs submitted with his application showing that the tenant had carried out some painting on a wall underneath a window to conceal some gouges and scratches and he complained that she had used the wrong colour of paint.
10. The landlord also complained that there were scratches and gouges on the window sill and trim that also had to be repaired. He claimed that the damage to the wall and window sill was caused by the tenant's cat.
11. According to the landlord's submitted breakdown, it took him 4 hours to carry out the plastering of the wall and window ledge and it took him 6 hours to carry out the painting. He is seeking compensation in the amount of \$194.00 in compensation for his personal labour (10 hours x \$19.40 per hour). He is also seeking an additional \$130.46 for materials. He pointed to 2 submitted receipts showing that he had purchased some plaster, some rollers and a can of paint for \$90.45 and he is also seeking compensation for other materials that he had on hand.
12. The landlord stated that this wall was last painted about 2 years ago.

The Tenant's Position

13. The tenant acknowledged that her cat had damaged the wall and she also acknowledged that she had repainted it with the wrong colour paint.
14. However, she denied that her cat had caused any damage to the window sill and she argued that this damage was caused by the previous tenant.

Analysis

15. 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*

16. As the tenant acknowledged that she had caused damage to the wall, I find that she is responsible for the costs of carrying out the repairs.

17. With respect to the window ledge, however, I find that the landlord has not submitted enough evidence to establish that that damage was caused during this tenancy. There was no report of an incoming or outgoing inspection and no photographs were submitted showing the condition of this window ledge when the tenant moved in.
18. Given that it is expected that a landlord would be required to repaint a rental unit every 3 to 5 years, factoring in depreciation and removing the claim for the window ledge, I find that the landlord is entitled to compensation in the amount of \$100.00.

Decision

19. The landlord's claim for compensation for damages succeeds in the amount of \$100.00.

Issue 2: "Other" Expenses – 117.60

Relevant Submissions

The Landlord's Position

20. The landlord stated that after the tenant moved out he was required to carry out 4 hours of cleaning.
21. He complained that the bathtub and toilet were not clean, that there was garbage left around the apartment and a trash can had not been emptied. He also stated that he had to wipe down the countertops and the stove and he had to mop the floors. He pointed to the photographs submitted with his application to corroborate his claim.
22. The landlord is seeking \$77.60 in compensation for 4 hours of his personal labour (4 hours x \$19.40) as well as \$20.00 for cleaning supplies. No receipts were submitted with the landlord's application.
23. The landlord is also seeking a payment of \$20.00 for the costs of filing this application.

The Tenant's Position.

24. The tenant argued that as she had only lived at the unit for 3 months, she could not have caused the unit to be so dirty that it would require 4 hours of cleaning.
25. She also claimed that she had indeed cleaned the unit before she left. She stated that she had scrubbed the toilet and the bathtub before vacating and

claimed that the ring in the toilet, that can be seen in the landlord's photographs, was there when she moved in and it could not be removed.

26. The tenant conceded that she may have forgotten to empty the trashcan in the bathroom and she also acknowledged that the countertops needed to be wiped down.

Analysis

27. The photographs submitted by the landlord do show that the top of the stove had not been cleaned, that the toilet is dirty and that there is also some dirt on the floor.
28. However, with no report of an incoming inspection, I find that the landlord has failed to establish that the staining in the toilet was caused during this tenancy. Based on the submitted evidence, I find that the landlord is entitled to compensation for 2 hours of labour to clean the apartment—\$38.80.
29. I deal with the filing fee in section 43, below.

Decision

30. The landlord's claim for compensation for the costs of cleaning succeeds in the amount of \$38.80.

Issue 3: Rent - \$300.00

Relevant Submissions

The Landlord's Position

31. The landlord submitted rent records with his application showing the payments he had received from the tenant since she moved in. According to these records, rent was paid and up-to-date for the period ending 31 October 2019, but he claimed that he had only received a total of \$700.00 for November 2019.
32. The landlord is seeking an order for a payment of the remaining \$300.00 in rent for November 2019.

The Tenant's Position

33. The tenant stated that she shared the rent with her co-tenant, █, and they would each pay \$500.00 to the landlord each month.

34. The tenant testified that she had paid her share of the rent for November 2019, but she stated that she could not make any comment on what payments [REDACTED] had made for that month.

Analysis

35. I accept the landlord's testimony in this matter and I find that he had not received the full rent for November 2019 and that \$300.00 is outstanding.

36. Although I don't doubt the tenant's claim that she had paid her share of the rent for this month, as this was a joint tenancy both she and [REDACTED] are jointly responsible for paying the full amount of rent each month.

Decision

37. The landlord's claim for a payment of rent succeeds in the amount of \$300.00.

Issue 4: Late Fees - \$171.00

Relevant Submissions

38. The landlord has assessed late fees in the amount of \$171.00.

Analysis

39. Section 15.1 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.

40. The minister has set the following fees:

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 02 November 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 5: Hearing Expenses

43. The landlord paid a fee of \$20.00 to file this application. Policy with this Section is that an applicant would be able to claim that fee as a hearing expense if they are awarded an amount that is greater than the security deposit. The landlord stated that the tenant had paid a security deposit of \$600.00 on 16 August 2019. As the amount of that deposit is greater than the amount awarded to the landlord through this application, his claim for hearing expenses does not succeed.

Decision

44. The security deposit shall be disposed of as follows:

- a) Refund Security Deposit\$600.00
- b) LESS: Compensation for Damages (\$100.00)
- c) LESS: Cleaning..... (\$38.80)
- d) LESS: Rent (\$300.00)
- e) LESS: Late Fees (\$75.00)
- f) Total Owing to Tenant.....\$86.20

21 September 2020

Date

John R. Cook
Residential Tenancies Tribunal