

## Residential Tenancies Tribunal

Decision 20-0074-01

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:20 pm on 24 March 2021 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", did not participate.

### Issues before the Tribunal

3. The landlord is seeking the following:
  - An order for a payment of \$500.00 in compensation for inconvenience,
  - An order for a payment of \$1000.00 in compensation for damages, and
  - An order for a payment of rent in the amount of \$1841.69, and
  - An order for a payment of late fees in the amount of \$75.00.

### 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 is 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 I was unable to reach her 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. The landlord submitted an affidavit with his application stating that he had served the tenant with notice of the hearing, by e-mail and by text-message, on 11 December 2021. A copy of the e-mail was submitted with the landlord's application and he pointed out that that e-mail address had been provided to him in the submitted rental agreement. 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 her absence.

7. The landlord amended his application and stated that he was no longer seeking compensation for inconvenience or late fees.

### **Issue 1: Compensation for Damages - \$1000.00**

#### **Relevant Submissions**

8. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant on 01 June 2019. That agreement was renewed on 01 June 2020 and a copy of that renewed lease was submitted with his application (█ #1). The agreed rent was set at \$1000.00 per month and the landlord stated that the tenant had paid a security deposit of \$500.00 on 19 April 2019.
9. The landlord stated that the tenant fell into rental arrears in October 2020 and as a result he issued her a termination notice requiring that she vacate the unit at the end of November 2020. He testified that he was informed by the tenant's neighbours that the tenant was packing her possessions at the end of that same month and she vacated the property on 28 November 2020.
10. The landlord stated that after he had regained possession of the unit he discovered that some damages had been caused to the property and he submitted the following breakdown of the costs to carry out the repairs:

• Repair walls .....	\$600.00
• Repair backyard.....	\$200.00
• Replace broken mirror .....	\$200.00
• Total.....	<u>\$1000.00</u>
11. The landlord stated that the tenant had put numerous holes in the walls of the rental property during her tenancy and before she vacated she plastered all the affected areas. The landlord pointed to his submitted photographs showing the repair job the tenant had carried out (█ ##2-8).
12. The landlord stated that all of these plastered areas now need to be sanded and the walls need repainting. That work has not yet been carried out, but the landlord submitted a quote (█ #9) showing that he would be charged \$1380.00

to have the walls in the unit plastered and repainted. The landlord stated that the unit was last painted in 2018.

13. At the hearing, the landlord struck his claim for the costs to repair the backyard and the mirror.

## **Analysis**

14. 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*

15. I accept the landlord's claim that the tenant had plastered over some holes in the apartment and that the walls now need to be sanded and repainted.
16. It is expected that a landlord would have to repaint the walls at a rental unit every 3 to 5 years as a result of normal wear and tear, and as these walls were last painted in 2018, I find that the landlord is entitled to a depreciated award of \$828.00 ( $\$1380.00 \times 2/5 = \$552.00$ ).

### **Decision**

17. The landlord's claim for compensation for damages succeeds in the amount of \$552.00.

## **Issue 2: Rent - \$1841.69**

### **Relevant Submissions**

18. The landlord stated that the tenant's rent was paid and up-to-date for the period ending 30 September 2020.
19. After that date, the landlord claimed that he had only received 1 rent payment from the tenant in the amount of \$233.31. The landlord calculates that he is owed \$1841.69 for the months of September and October 2020.

### **Analysis**

20. I accept the landlord's claim that the tenant had not paid rent as required and that after 30 September 2020 he had only received 1 payment of \$233.31.
21. Based on that testimony, I calculate that the landlord is entitled to a payment of \$1766.69 (\$2000.00 in rent of September and October 2020 less \$233.31).

### **Decision**

22. The landlord's claim for a payment of rent succeeds in the amount of \$1766.69.

## **Issue 3: Security Deposit**

23. The landlord stated that the tenant had paid a security deposit of \$500.00 on 19 April 2019. As his claim for compensation for damages and rent has been successful, he shall retain that deposit as outlined in this decision and attached order.

## Summary of Decision

24. The landlord is entitled to the following:

- |   |                         |
|---|-------------------------|
| a) Compensation for Damages .....                 | \$552.00                |
| b) Rent Owing.....                                | \$1766.69               |
| c) LESS: Security Deposit ..... <b>(\$500.00)</b> |                         |
| d) Total Owing to Landlord .....                  | <b><u>\$1818.69</u></b> |

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22 June 2021

Date

  
John R. Cook  
Residential Tenancies Tribunal