

Residential Tenancies Tribunal

Decision 20-0200-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:08 am on 11 September 2020 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 compensation for damages in the amount of \$1500.00,
 - An order for a payment of rent in the amount of \$7000.00,
 - An order for a payment of late fees in the amount of \$75.00, and
 - Authorization to retain the security deposit of \$750.00.

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 section 15 of the *Residential Tenancies Act, 2018*, policy 9-3: Claims for Damage to Rental Premises and Rules 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 a 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 she had served the tenant with notice of the hearing, by text-message, on 24 August 2020 and a copy of that text-message was also submitted with her application. The landlord testified that he had been communicating with the tenant at that cellular number since 2018. 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.

Issue 1: Compensation for Damages - \$1500.00

Relevant Submissions

7. The landlord stated that he had entered into a 1-year, fixed-term lease with the tenant on 15 May 2015 and a copy of the executed lease was submitted with his application. The agreed rent was set at \$1450.00 per month, due on the 15th day of each month, and it is acknowledged in the submitted lease that the tenant had paid a security deposit of \$750.00.
8. The landlord stated that the tenant had fallen into rental arrears in 2018 and on 20 March 2020 he issued her a termination notice. A copy of that notice was submitted with his application. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 31 March 2020. The tenant vacated on 09 April 2020.
9. The landlord stated that the tenant had caused significant damages to the rental unit during her tenancy and he also complained that it had not been adequately cleaned after she had vacated. Because of these issues, the landlord used the period from the time she vacated in April 2020 to 01 July 2020 carrying out repairs and preparing for new tenants.
10. The landlord stated that after the tenant moved out he discovered that there were holes in the ceilings and walls, that the railing was falling off and that there were gouges in the hardwood floors. He also stated that the whole unit had to be repainted. No photographs were submitted with his application.
11. Regarding the costs the landlord is seeking here, he pointed to a quote he had received from a contractor which states that he would be charged \$5537.25 for plastering and painting throughout the unit, the reinstallation of the loose railing and post, repair of the partition in the main foyer and the repair of the door frame.
12. The landlord stated that after the tenant moved out, he plastered and painted the whole apartment and carried out most of the required repairs. He stated that the

floors have not been repaired however. No receipts or invoices were submitted with his application.

Analysis

13. 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*

14. I find that the landlord had submitted insufficient evidence to justify an award here. With no photographs or videos, it is difficult to determine the extent of the

damage caused by the tenant. There was also insufficient evidence submitted to establish that this damage was caused during this tenancy as the landlord also did not submit an incoming or outgoing inspection report. Furthermore, no receipts or invoices were submitted showing the costs the landlord had actually incurred.

15. I'll also point out that the landlord testified that the unit was last painted 6 years ago, in 2014. Given that a paintjob in a rental unit has an expected lifespan of between 3 and 5 years as a result of normal wear and tear through successive tenancies, the unit would probably now have to be repainted anyhow, at the landlord's expense.

Decision

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

Issue 2: Rent Owing - \$7000.00

Relevant Submissions

17. The landlord submitted a rent records he had issued to the tenant on 19 March 2020 showing the payments she had made since December 2018. According to these records, the tenant first fell into rental arrears in December 2018 and she has not had a zero-balance since that time. The records also shows that the tenant only made her full monthly rental payment on 3 occasions and through 2019 and 2020 the rental arrears continued to accrue.
18. By 14 February 2020, the arrears totalled \$2650.00 and the rent records show that no payments were made for the rental periods beginning 15 February and 15 March 2020, brining the amount owing to \$5550.00 for the period ending 14 April 2020.
19. The landlord stated that he was given no notice that the tenant was vacating on 09 April 2020. He also complained that once he took possession of the unit, he was required to carry out some cleaning and repairs, and he was therefore unable to put a new tenant in place until 01 July 2020. In addition to the \$5550.00 that is owing for the period ending 14 April 2020, the landlord is also seeking additional compensation in the amount of \$1450.00 for the loss of rental income he suffered for the period from 15 April to 14 May 2020.
20. The total amount sought by the landlord is \$7000.00 (\$5550.00 + \$1450.00).

Analysis

21. I accept the landlord's claim that the tenant had not paid rent as required and his evidence shows that the tenant owes \$5550.00 for the period ending 14 April 2020.

22. I was not convinced, however, that the landlord is entitled for rent for the period from 15 April to 14 May 2020. As I found in the previous section, the landlord presented insufficient evidence to establish that the tenant had caused any damages to the property. I also found that because the unit had been last painted in 2014, it would have needed a new paintjob in 2020 anyhow, at the landlord's own cost. If the landlord was unable to put new tenants in place after the tenant had moved out because he was repainting, the tenant cannot be held responsible for any loss of rent suffered during that time.

Decision

23. The landlord's claim for a payment of rent succeeds in the amount of \$5550.00.

Issue 3: Late Fees - \$75.00

Relevant Submissions

24. The landlord has assessed late fees in the amount of \$75.00.

Analysis

25. Section 15.1(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.

26. 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.

27. As the tenant has been in rental arrears since December 2018, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 4: Security Deposit

29. The landlord stated that the tenant had paid a security deposit of \$750.00 on 23 April 2015 and receipt of that deposit is acknowledged in the submitted lease. As the landlords' claim has been successful, he shall retain that security deposit as outlined in this decision and attached order.

Summary of Decision

30. The landlord is entitled to the following:

- | | |
|---|-------------------------|
| a) Rent..... | \$5550.00 |
| b) Late Fees | \$75.00 |
| c) LESS: Security Deposit (\$750.00) | |
| d) Total Owing to Landlord | <u>\$4875.00</u> |

23 November 2020

Date

John R. Cook
Residential Tenancies Tribunal