

Residential Tenancies Tribunal

Decision 20-0205-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:06 pm on 17 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 \$1295.00,
 - An order for a payment of rent in the amount of \$200.00,
 - An order for a payment of late fees in the amount of \$75.00, and
 - An order for a payment of utilities in the amount of \$1761.95.

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 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 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 the tenant was served with notice of the hearing by registered mail and the associated tracking history shows that it was delivered to her on 04 August 2020. The tenant has had 43 days to provide a response. 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 - \$1295.00

Relevant Submissions

7. The landlord stated that he had entered into a monthly rental agreement with the tenant on 01 November 2018 and a copy of that executed agreement was submitted with his application. The agreed rent was set at \$350.00 per month and after the tenant had resided at the property for 12 months, that rent was increased to \$400.00 per month.
8. The landlord stated that the tenant fell into rental arrears in March 2020 and he therefore terminated the tenancy. The tenant was supposed to vacate by 15 March 2020, but the landlord stated that he did not regain possession of the unit until 31 March 2020.
9. After the tenant moved out the landlord stated that he discovered that there were significant damages caused to the property and some items that he had supplied her with for use during her tenancy were now missing. He submitted the following breakdown of the costs to carry out repairs and to replace the missing items:
 - Garbage bin \$100.00
 - Blinds x 3 \$105.00
 - Valence rod..... \$60.00
 - Curtains and rod, dining room..... \$45.00
 - Drapes and rod, master bedroom \$60.00
 - Exterior clean up..... \$100.00
 - Interior clean up \$200.00
 - Replace electric fireplace, dining room \$500.00
 - Replace wall mirror \$25.00
 - Replace small electric fireplace, bathroom \$100.00
 - Total..... \$1295.00

10. The landlord stated that the tenant was supplied with a new wooden garbage bin before the tenancy began and he pointed to a submitted photograph showing that it he had found it smashed and broken after the tenant had moved out. He is

seeking \$100.00 in compensation for the costs of replacing that bin. It has not yet been replaced and the landlord submitted no receipts or quotes at the hearing for the costs he is seeking here.

11. The landlord also complained that 3 sets of plastic mini-blinds, located in the dining room, the upstairs hall and in the second bedroom, were damaged after the tenant moved out and the landlord pointed to his photographs showing that some slats in these blinds were broken. The landlord stated that these blinds were approximately 5 years of age. They have not yet been replaced and the landlord submitted no receipts or estimates for the costs that he is seeking here.
12. He also complained a valence, a curtain and drapes, as well as the rods they were hung on, were missing from the living room, the dining room and the master bedroom after the tenant vacated. He stated that they were all about 3 or 4 years of age. They have not yet been replaced and no receipts or estimates were submitted at the hearing.
13. The landlord also stated that he had his neighbour clean up the exterior and interior of the house after the tenant moved out. He stated that he had found garbage on the front porch, on the back deck and on the lawn and he also complained that the tenant had thrown her cat's litter on the ground. The landlord stated that it took his neighbour about 2 days to collect that garbage and then transport it to the dump. He also stated that because the tenant had been smoking inside the house, his neighbour also had to wash down all the walls and clean all the floors. He claimed that it took between 2 and 3 days to have that work completed. The landlord is seeking \$100.00 in compensation for the costs of the exterior cleaning and \$200.00 for the work that was carried out inside.
14. The landlord also complained that 2 electric fireplaces and a mirror were also taken from the unit by the tenant when she vacated. He stated that the fireplace from the dining room was approximately 10 years of age and he is seeking \$500.00 for its replacement. Both the mirror and the small fireplace from the bathroom were about 3 years old, and he is seeking \$25.00 and \$100.00, respectively, for the costs of their replacement. No receipts or estimates were submitted at the hearing.

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. With respect to the issue of cleaning, I accept the landlord's claim that the unit had not been properly cleaned before the tenant moved out and I also accept the landlord's claim that there was a smell of cigarette smoke in the property. His photographs also show that there was a fair amount of garbage and debris left outside and that no cleaning had been carried out inside the unit. Beside the walls and floors, which the landlord raised at the hearing, the photographs also show that the kitchen appliances and the bathroom were also left very dirty. Policy with this Section is that a landlord may claim \$20.15 per hour for their personal labour. The landlord is seeking compensation in the amount of \$300.00 for cleaning, which, based on this approved rate for personal labour, comes to just over 14 hours. I find that compensation for that amount of labour is a fair award.
17. Regarding the other items claimed here by the landlord, I find that these claims do not succeed. Although there is evidence that some items are damaged and although I accept the landlord's claim that others are missing, the landlord presented no evidence to establish the costs he is seeking here. None of these

items have been replaced or repaired, and no receipts, invoices, estimates or quotes were submitted with his application.

Decision

18. The landlord's claim for compensation for damages succeeds in the amount of \$300.00.

Issue 2: Rent - \$200.00

Relevant Submissions

19. The landlord testified that the tenant was supposed to have moved out of the property by 15 March 2020. As she was only staying there for half of that month, he only charged her half of the rent: \$200.00.
20. However, the landlord stated that the tenant decided to stay at the unit through to 31 March 2020 and he is therefore seeking an order for a payment of the other half of the rent for March 2020.

Analysis and Decision

21. I accept the landlord's claim that the tenant had only paid rent half the rent for March 2020 despite the fact that she had resided at the property for that full month. As such, his claim succeeds in the amount of \$200.00.

Issue 3: Late Fees - \$75.00

Relevant Submission

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

Analysis

23. 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.

24. 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.

25. As the tenant has been in rental arrears since 16 March 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 4: Utilities - \$1761.95

Relevant Submissions

- 27. The landlord stated that the tenant was required to pay her own utilities, but instead of having the electricity account placed in her name, it remained in the name of the landlord and she agreed that she would pay to him the cost of the electricity she had consumed each month when the bills came due.
- 28. The landlord testified that the tenant had not paid her electricity bills for the last 3 months of her tenancy and copies of those bills were submitted with his application showing the charges she had incurred for the period from 03 January 2020 to 03 April 2020. These bills total \$1778.54 (\$613.44 + \$593.68 + \$571.42).
- 29. The landlord also complained that the tenant had deducted \$300.00 from a previous electricity bill because she had to purchase new baseboard heaters and have them installed at the rental unit. The landlord stated that he was agreeable to that deduction at the time, but he claimed that the tenant never did send him a receipt for those heaters and he testified that on inspection of the rented premises, it does not appear that any new heaters were installed. On top of the electricity charges for January, February and March 2020, the landlord is also seeking a payment of that \$300.00.

Analysis

- 30. I accept the landlord's claim that the tenant had not paid the last 3 electricity bills and his evidence shows that she owes a total of \$1778.54.

31. I also accept his claim that although he had allowed the tenant to deduct \$300.00 from her electricity payments, she had not, as agreed, installed any new baseboard heaters.

Decision

32. The landlord's claim for a payment of utilities succeeds in the amount of \$2078.54.

Summary of Decision

33. The landlord is entitled to the following:

a) Compensation for Damages.....	\$300.00
b) Rent.....	\$200.00
c) Late Fees	\$75.00
d) Utilities.....	\$2078.54
e) Total Owing to Landlord	<u>\$2653.54</u>

26 November 2020

Date

John R. Cook
Residential Tenancies Tribunal