

Residential Tenancies Tribunal

Decision 20-0360-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:10 am on 27 October 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. She was represented at the hearing by [REDACTED] ("[REDACTED]").
3. The respondent, [REDACTED], hereinafter referred to as "[REDACTED]", also participated in the hearing. Her co-respondents, [REDACTED] ("[REDACTED]") and [REDACTED] ("[REDACTED]") were not in attendance.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for compensation for inconvenience in the amount of \$400.22;
 - An order for a return of missing possessions valued at \$254.92;
 - An order for a payment of rent in the amount of \$275.00;
 - An order for a payment of late fees in the amount of \$75.00;
 - An order for compensation for damages in the amount of \$608.69; 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 case is sections 15 of the *Residential Tenancies Act, 2018* and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

7. [REDACTED] and [REDACTED] were not present or represented at the hearing. I was unable to reach [REDACTED] by telephone and when I spoke to [REDACTED], she informed me that she was unable to participate. 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlord submitted affidavits stating that she had served [REDACTED] and [REDACTED], by e-mail, on 29 September 2020 and copies of those e-mails were submitted with her application. The e-mail addresses used by the landlord were supplied to her by [REDACTED] and [REDACTED] in the rental agreement. As [REDACTED] and [REDACTED] were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issue 1: Missing Possessions - \$254.92

Relevant Submissions

The Landlord's Position

8. The landlord stated that she had entered into a 1-year, fixed-term lease with the tenants on 01 March 2020 and a copy of the executed lease was submitted with her application. The agreed rent was set at \$1100.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$550.00.

9. [REDACTED] issued the landlord a termination notice on 30 June 2020 and the landlord stated that she had regained possession of the property on 01 August 2020.

10. The landlord stated that after the tenants moved out, she discovered that some of the furnishings that they had been supplied with were missing. She submitted the following breakdown of the costs to replace those items:

• Mini-split remote control.....	\$71.92
• Oven rack	\$70.89
• Table lamp	\$133.00
• Lamp shade	\$50.00
• Total	<u>\$325.81</u>

11. Regarding the mini-split remote, the landlord stated that she ordered a new remote after the tenants vacated and she pointed to an e-mail from Reliable Parts showing that she was charged \$71.92 for a replacement. She stated that that remote was approximately 6.5 years old.
12. The landlord also stated that one of the oven racks from her new oven was missing after the tenancy ended. That rack has not yet been replaced but she submitted an e-mail from Reliable Parts in which she claims that she is quoted \$70.89 for a replacement rack.
13. She also stated that a wrought-iron table was missing after the tenants moved out. She submitted a screenshot from E-Bay showing that a similar lamp was selling for \$133.00 (\$100.00 USD).
14. The landlord stated that the tenants had also removed the lampshade from a different wrought-iron floor-lamp after they had moved out. She is seeking \$50.00 for its replacement.

■'s Position

15. Regarding the mini-split remote, ■ stated that it was still at the unit when she vacated in June 2020. She stated that ■ and ■ continued to reside at the property during July 2020 and she claimed that their movers may have packed it and removed it when they were moving.
16. ■ acknowledged that the oven rack was missing and she also acknowledged that the landlord is entitled to the costs she is seeking here. ■ stated that ■ had removed that rack to use as a grill on a fire pit and she claimed that it was now irreparably damaged.
17. ■ also acknowledged that the lamp was missing after she had moved out. She claimed that the lamp was in ■'s bedroom during her tenancy, but she claimed that since she moved out, she has seen a photograph which was posted on social media after she moved in which that lamp is visible in the background.
18. ■ also acknowledged that the lamp-shade is missing and she claimed that she had seen a post by ■ on Facebook Marketplace in which she was advertising that lamp-shade for sale.

Analysis

19. I accept the landlord's claim that these 4 items were missing after the tenants moved out and her claim was not contested by ■. As such, I find that the tenants are responsible for the replacement costs of these items.

20. Depreciation must be taken into account when awarding compensation for missing possessions or damaged items. As mini-splits have an expected lifespan of 20 years and as lamps can be expected to last up to 15 years, I depreciate the landlord's claim, based on their remaining life expectancy, accordingly:

• Mini-split remote control.....	\$48.55
• Oven rack	\$70.89
• Table lamp	\$44.33
• Lamp shade	\$16.67
• Total	<u>\$180.44</u>

Issue 2: Compensation for Damages – \$608.69

Relevant Submissions

The Landlord's Position

21. Besides these missing items, the landlord also claimed that the tenants had caused some damages to the property and she submitted the following breakdown for the costs of carrying out repairs:

• Refrigerator door.....	\$381.57
• Shed door	\$77.04
• Wall repairs.....	\$58.99
• Bi-fold door hardware	\$13.79
• Clips	\$2.29
• Curtain rod.....	\$4.13
• Total	<u>\$537.81</u>

22. Regarding the refrigerator door, the landlord stated that this refrigerator was brand new when the tenancy began and she claimed that there was now a large dent in its door. She stated that she had received an estimate from Reliable Parts for the costs of replacing that door in the amount of \$381.57, which included the costs of shipping. That door has not yet been replaced.

23. The landlord also complained that the steel door for the shed had been kicked in, causing a large dent and also causing the lock on that door to break. ■■■ stated that he had to purchase a new lock for that door and he pointed to a receipt showing that he had been charged \$77.04 for a replacement. Regarding the door itself, ■■■ stated that he had to pry the frame out.

24. The landlord stated that the tenants had also caused damage to the walls at the property. She stated that there was a hole in the bathroom door which had been caused by the door knob and [REDACTED] stated that he had to plaster and repaint approximately 20 screw holes he had found in the closets. The landlord is seeking compensation in the amount of \$58.99 for the costs of paint and plaster that she already had on hand from when the unit was last painted 1 year ago.
25. The landlord also complained that she was required to replace the hardware on 3 bi-fold closet doors as these pieces were missing after the tenants moved out. She is seeking \$13.79 in compensation for the hardware that she already had on hand. She stated that she also had to replace some shelving clips that were missing and she had to repair the double-ended screw in a curtain rod. She is seeking \$2.29 as compensation for the repair clips that she already had on hand and \$4.13 for the screw for the curtain rod. No receipts or quotes were submitted for these repairs.

[REDACTED]'s Position

26. [REDACTED] claimed that [REDACTED] punched the refrigerator door when she was in an altercation with [REDACTED]. She also claimed that [REDACTED] was wearing a ring at the time and she had also caused there to be a large scratch in the door. She made no comment on the costs of replacing the door.
27. She also attributed the damage which had been caused to the shed door and to the bathroom wall to the other 2 tenants. She testified that they would get into altercations and lock themselves in the shed or bathroom and then the other tenant would try to enter by kicking the doors in.
28. [REDACTED] acknowledged that [REDACTED] had removed the door to the laundry room and she claimed that [REDACTED] and [REDACTED] had also removed their closet doors in their bedrooms. She stated that she did not know what had become of the shelving clips but conceded that [REDACTED] had told the landlords that she would repair the curtain rod herself.

Analysis

29. I accept the landlord's evidence which shows that there is a significant dent in her new refrigerator door. As [REDACTED] stated that this damage was caused by the tenants deliberately punching that door, I find that the landlord is entitled to the costs of replacing that door. Her evidence shows that she would be charged \$381.57 for a new door. I also accept the landlord's claim that she had to purchase a new lock for the shed door and also find that that is entitled to her claim of \$77.04 for a new lock.
30. Regarding the remaining costs claimed by the landlord here, I find that she had not presented enough evidence (e.g., receipts or quotes) to allow me to make a determination of a reasonable award.

Decision

31. The landlord's claim for compensation for damages succeeds in the amount of \$458.61 (\$381.57 + 77.04)

Issue 3: Compensation for Inconvenience - \$400.22

Relevant Submissions

The Landlord's Position

32. The landlord complained that she was required to purchase an industrial cleaner for the shed as there was bad odour left behind caused by smoke from cigarettes and cannabis as well as odour from the large amount of garbage bags left there. She submitted a receipt showing that she was charged \$77.05 for that cleaner.
33. Additionally, the landlord is seeking compensation for 15.25 hours of [REDACTED]'s personal labour. She stated that [REDACTED] cleaned the shed and he had to remove the fire-pit that the tenants had put in the back yard. He also carried out the repairs to the walls, the closets, the curtain rod and the bi-fold doors, noted in the previous section. [REDACTED] also removed numerous bags of garbage that had been left behind on the back deck and he had to make a 30 km round trip to the dump to dispose of this garbage.
34. Although the landlord is not making a claim for the costs of cleaning the unit, she did state that significant cleaning was required and she is claiming the costs she had incurred for cleaning supplies. Her submitted receipts show that the landlord had purchased garbage bags, TSP cleaner and drain cleaner at a cost of \$41.09.

[REDACTED]'s Position

35. [REDACTED] stated that she moved out in June 2020 and any mess left behind at the property was the responsibility of [REDACTED] and [REDACTED]. She also claimed that the garbage in the shed had been left there by the other tenants, not her.

Analysis

36. I accept the landlord's testimony in this matter and I find that the unit was not adequately cleaned after the tenants vacated. [REDACTED] and [REDACTED] also both corroborated the landlord's claim that there was significant garbage left behind in the shed. Accordingly, I find that the landlord is entitled to the costs of cleaning supplies she is claiming here: \$118.14 (\$77.05 + \$41.09).

37. I also accept the landlord's claim that [REDACTED] had spent 15.25 hours carrying out repairs to the unit and removing garbage and I find that she is entitled to the full costs she is seeking here for his labour: \$295.85 (15.25 hours x \$19.40 per hour).

Decision

38. The landlord's claim for compensation for inconvenience succeeds in the amount of \$413.99 (\$118.14 + \$295.85).

Issue 4: Rent - \$275.00

Relevant Submissions

The Landlord's Position

39. The landlord stated that the monthly rent was set at \$1100.00 but in July 2020 she had only received \$825.00. She stated that [REDACTED] and [REDACTED] had paid their portion of the rent for that month and it was [REDACTED] who was responsible for the arrears.

[REDACTED]'s Position

40. [REDACTED] did not contest the landlord's claim and she agreed with her that [REDACTED] had not paid her portion of July's rent.

Analysis

41. I accept the landlord's claim that the tenants owe \$275.00 in rent for July 2020 and that claim was corroborated by [REDACTED]. As such the landlord's claim succeeds.

Decision

42. The landlord's claim for a payment of rent succeeds in the amount of \$275.00.

Issue 5: Late Fees - \$75.00

Relevant Submissions

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

Analysis

44. Section 15 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.

45. The minister has prescribed 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.

46. As the tenants have been in arrears since 02 July 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 6: Security Deposit

48. The landlord stated that the tenants had paid a security deposit of \$550.00 on 01 March 2020 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, she shall retain that security deposit as outlined in this decision and attached order.

Issue 7: Hearing Expenses

49. As the landlord's claim has been successful, the tenants shall pay her hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

50. The landlord is entitled to the following:

- a) Missing Possessions \$180.44
- b) Compensation for Damages \$458.61
- c) Compensation for Inconvenience \$413.99

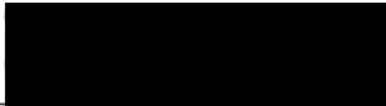
d) Rent..... \$275.00
e) Late Fees \$75.00
f) Hearing Expenses \$20.00

g) LESS: Security Deposit (\$550.00)

h) Total Owing to Landlords..... \$873.04

19 February 2021

Date


John R. Cook
Residential Tenancies Tribunal