

Residential Tenancies Tribunal

Decision 20-0410-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:06 am on 03 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", also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of \$505.70 in compensation for damages; and
 - Authorization to retain \$505.70 of the security deposit.
4. The tenant is seeking an order for the following:
 - An order for a refund of the security deposit in the amount of \$938.71;
 - An order for a refund of rent in the amount of \$130.00;
 - An order for a payment of utilities in the amount of \$72.68; and
 - An order for a payment of \$2242.90 in compensation for inconvenience.

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 policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

7. The landlord amended his application and stated that he was now seeking \$803.42 in compensation for damages.

Issue 1: Compensation for Damages - \$803.42

Relevant Submissions

The Landlord's Position

8. The landlord and tenant entered into a 1-year, fixed-term rental agreement on 04 September 2019 and a copy of that executed lease was submitted with the landlord's application (■ #1). The agreed rent was set at \$1300.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$975.00.
9. In May 2020 the tenant informed the landlord that he was terminating their rental agreement and he vacated on 15 August 2020.
10. When the tenancy began, the landlord's property manager, ■, along with the tenant, conducted a walkthrough of the property, but no condition report was compiled. No condition report was compiled when the tenancy ended either.
11. With his application, the landlord submitted several documents outlining the costs of the repairs he had to carry out after the tenant moved out, and I summarize his claim as follows:
 - Tenant wall damage repairs..... \$83.79
 - Cleaning \$255.00
 - Mould Remediation..... \$60.00
 - Plumbing..... \$404.63
 - Total \$803.42

Wall Damage

12. The landlord stated that the tenant had put sticky hangers on the walls in 2 rooms at the property and they had left holes in the walls when they were pulled off. He hired a handyman to plaster those holes, at a cost of \$40.00 for 2 hours work, and he claimed \$37.50 for the 2.5 hours it took ■ to repaint. He also submitted a receipt showing that he had paid \$6.29 for plaster (■ #2).

13. The landlord stated that the unit was last painted in April 2018.

Cleaning

14. The landlord is also seeking compensation for 17 hours of cleaning that had to be undertaken by █. She reported to the landlord that there was grease found on the range hood and its filter and additional grease splatters were found throughout the kitchen. The landlord stated that it took █ 9 hours to clean those areas and an additional 8 hours to clean the tops of the cabinets. In support of his claim, the landlord submitted a statement from █ as well as photographs showing the grease splatter on the walls and under the range hood (█ #3).

Mold Remediation

15. The landlord also claimed that there was an area of the house that had developed mold as a result of excessive moisture in the house. The landlord claimed that this moisture buildup had occurred because the tenant had been keeping the windows at the unit open, even when it was cold outside.
16. The landlord stated that the mold had caused a stain on a wall that had to be repaired and there the areas around the windows also had to be cleaned. He is seeking compensation for 4 hours of cleaning to address those issues.

Plumbing

17. The landlord stated that a clog had developed in the bathtub and the tenant had attempted to unclog the tub by snaking the pipe. The landlord stated that that attempt to clear the clog had damaged several rings and joins in the piping and he had to have it repaired by a professional plumber. He submitted a receipt from Hubley's (█ #4) showing that he was charged \$404.63 to have the pipes repaired after the tenant moved out.
18. With respect to the initial clog in the pipe, the landlord stated that he did not know what had caused that clog, but he argued that the tenant is responsible for it as he had not prevented it from happening.

The Tenant's Position

Wall Damage

19. The tenant acknowledged that he had caused this damage. However, he claimed that when the landlord first brought it to his attention in August 2020, after he had moved out, he was only seeking \$36.29 at that time. The tenant stated that he was willing to allow the landlord to retain that lower amount of the security deposit. At the hearing, the landlord agreed with the tenant that he should only be reimbursed for that amount.

Cleaning

20. The tenant claimed that when he did the outgoing walkthrough with █ in August 2020, she praised the tenant for the thorough job he had done cleaning and he claimed that she also did a careful inspection of the kitchen at that time. The tenant also pointed out that in his communications with the landlord after he moved out, there was no indication made to him that the landlord was dissatisfied with the cleanliness of the unit and there was no claim for cleaning on the landlord's application when he first filed it in August 2020.
21. Regarding the range hood, the tenant claimed that there was already dried grease on it when he moved in. Nevertheless, although the photographs submitted by the landlord are very localized, the tenant did acknowledge that they do show that there were some places where there was dirt or grease on the walls and he stated that he may have accidentally overlooked those areas when he was cleaning.

Mold Remediation

22. The tenant agreed with the landlord that there was a buildup of moisture in the unit and that mold had developed. However, he claimed that he did nothing out of the ordinary while living at the unit that would have caused that buildup of moisture and instead argued that the moisture and mold was a result of the poor air quality in the unit. He pointed out that there was no air exchanger in the unit and that the fan in the kitchen was not operational. He stated that the only way he could ventilate the property was to open the windows.
23. The tenant claimed that █ carried out an inspection of the property on 08 December 2019, just before he departed for a 3 week Christmas vacation, and when the tenant informed her of the mold, she assured him that she would clean it for him and have the affected area painted when he was away. The tenant testified that █ never did address the issue as promised and the mold continued to return during the remainder of the tenancy, even though he would clean that area every 3 to 4 weeks.

Plumbing

24. The tenant stated that he had an agreement with █ when he first moved in that he would not have to deal with any plumbing issues during this tenancy. He also argued that he was not responsible for the clog in the tub as clogs develop over a long period of time, and he claimed that this issue may have been developing for years.

25. The tenant also claimed that he had not damaged the pipes with the snake and he claimed that the tub had been leaking for some time before it became clogged and before he tried to resolve the issue. He also claimed that there had obviously been issues with these pipes for some time and he pointed out that there are dried water stains on the ceiling tiles below the bathroom.

Analysis

26. 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

27. With respect to the wall repairs, the landlord and the tenant agreed at the hearing that the landlord is entitled to \$36.29 in compensation for that damage and I therefore order an award in that amount.
28. With respect to the cleaning, the landlord photographs do show that there are some areas where there appears to be some splatter on the walls and some grease on the range hood. The tenant conceded that he may have accidentally overlooked those areas and I therefore agree with the landlord that is entitled to some compensation for cleaning. Based on the submitted photographic evidence, I find that the landlord is entitled to \$40.30 for 2 hours of cleaning (policy with this Section is that applicants may claim up to \$20.15 for each hour of their personal labour).
29. Regarding the mold, I find that the landlord has failed to establish that the tenant was responsible for that damage or for the moisture buildup. I was not convinced by the landlord that open windows contribute to the development of moisture and I find it more probable that that an open window would be a way to ventilate a house and alleviate moisture problems. As the landlord had not established that the tenant had caused the mold issue, this portion of his claim does not succeed.
30. I also find that the landlord has failed to establish that the tenant had caused any damage to the tub or that he was responsible for the fact that it had become clogged. The tenant's evidence, on the other hand, shows that there had been ongoing issues with the plumbing throughout the tenancy and his evidence also suggests that the pipes for the tub may have been leaking for some time.

Decision

31. The landlord's claim for compensation for damages succeeds in the amount of \$76.59 determined as follows:

• Wall repairs	\$36.29
• Cleaning	\$40.30
• Total	<u>\$76.59</u>

Issue 2: Refund of Rent - \$130.00

Issue 3: Utilities - \$72.68

Decision

32. The landlord acknowledged that the tenant had overpaid his rent by \$130.00 and that the tenant is entitled to a reimbursement of \$72.68 in utilities. As such, the tenant's claim for those 2 items succeeds.

Issue 4: Compensation for Inconvenience - \$2274.74

Relevant Submissions

The Tenant's Position

33. The tenant argued that the rental unit was in a state of disrepair during his tenancy and that the landlord did not adequately addressed his concerns or complaints about the property. He argued that he was inconvenienced because of the disrepair of the property and he is seeking the following compensation:

- Mold untreated..... \$350.00
- Kitchen fan..... \$150.00
- Faulty plugs \$200.00
- Air quality and odour..... \$71.42
- Unrepaired bathroom..... \$400.00
- Unsafe backyard..... \$350.00
- Fridge condensate \$753.32
- Total \$2274.74

Mold

34. The tenant stated that there were air quality issues at the unit and that there was no way to mechanically ventilate the apartment. He claimed that the only way to allow air to circulate in the unit was to open the windows, but he claimed that [REDACTED] insisted that he have them closed. Because of the poor air quality, the tenant claimed that mold developed in the master bedroom, and despite his efforts to clean it, it always returned.

35. The tenant also stated that during his tenancy, his infant daughter developed a cough because of that mold.

36. The tenant calculated that he is entitled to compensation for the inconvenience he suffered because of the cleaning he had to do in the master bedroom where the mold developed and because of the fact that his daughter became sick as a result of the mold.

Kitchen Fan

37. The tenant also argued that a contributing factor to the poor air quality in the unit was the fact that the kitchen fan was not working. That fan was located in the ceiling above the stove but the switch for that fan was non-functional. The only ventilation in the kitchen was the range hood, which the tenant stated was very weak.
38. The tenant claimed that he had asked █ to have the fan repaired but no work was carried out during his tenancy. The tenant is seeking compensation in the amount of \$10.00 per month for 15 months for the inconvenience of not being able to adequately ventilate the kitchen.

Faulty Plugs

39. The tenant also complained that the electrical outlets in the master bedroom were not working for the period from May to August 2020. He stated that he had complained to █ about that matter in May 2020, but she did not address the matter at that time and instead claimed that the tenant must have tripped the breakers. The tenant stated that he had checked the breakers, and there were no issues.
40. The tenant also claimed that █ had visited the unit again on 23 June 2020 and he had again asked that these outlets be inspected, but █ did not comply with that request and she did not have her handyman check on them.
41. The tenant stated that not having access to electrical outlets in the master bedroom was a significant inconvenience and it greatly affected his lifestyle. He was unable to turn on the bedside lamps, he could not use his baby monitor and his wife was unable to do her hair. He is seeking compensation in the amount of \$200.00 for the 4 months he could not use those outlets in the bedroom.

Air Quality and Odour

42. The tenant acknowledged that the landlord had supplied him with 2 dehumidifiers to address the moisture issues in the apartment, but he stated that 1 of those was not working and that the other was unbearably noisy. Nevertheless, the tenant used that noisy dehumidifier in the kitchen area to attempt to mitigate the dampness during his tenancy.
43. To address the mold issue in the green room, the tenant stated that he was required to purchase his own dehumidifier at a cost of \$71.42 and he submitted a copy of that receipt with his application (█ #1). He pointed out that since he had moved to his new apartment, he no longer needs to use this dehumidifier.

44. The tenant acknowledged that he had not requested that the landlord supply him with a new dehumidifier.

Unrepaired Bathroom

45. The tenant stated that there were 2 issues with the bathroom. The bathtub was clogged and leaking and could not be used and the bathroom sink also had a faulty seal and would also leak.

46. The tenant stated that he had complained to [REDACTED] about these issues during his tenancy, but she refused to carry out the required repairs and claimed that the tenant was responsible for any clogging issues as it was caused by his use of the tub.

47. The tenant claimed that because he could not use the sink to wash his hands and because the tub was clogged and leaking, he deemed that bathroom to be unusable. He and the rest of his family members were then required to share the other, smaller bathroom for the period from May to August 2020 and he is seeking \$400.00 in compensation for the inconvenience he endured during that period.

Unsafe Backyard

48. The tenant also complained about the state of the backyard and he stated that he could not use it during the duration of his tenancy. He claimed that because of its poor condition, it was very difficult to mow and there were several dangerous areas on that yard and he claimed that there were places where broken glass could be found.

49. He also testified that because of the backyard's poor condition, he had an agreement with [REDACTED] that he would only be responsible for mowing the front lawn. He stated that [REDACTED] agreed to maintain the backyard and she promised that in the spring of 2020 she would address the lawn maintenance and make it safe for his children to use. He claimed that [REDACTED] never lived up to that promise.

50. The tenant stated that he was inconvenienced because he was without the use of the yard for the fall of 2019 and the spring and summer of 2020. He is seeking \$350.00 in compensation.

Fridge Condensate

51. The tenant also stated that the refrigerator was not functioning properly during his tenancy. He complained that the freezer would not completely freeze the items he placed in there and that there was a significant amount of condensation in the refrigerator.

52. The tenant testified that [REDACTED] informed him that he ought to reduce the amount of items he stored in the refrigerator and freezer to cope with these issues, and the tenant stated that although he complied with that request, any vegetables that he stored in the refrigerator would start to go bad within a few days.
53. Because of the issue with the refrigerator, the tenant complained that he was only able to store a small amount of items in the refrigerator and only for a few days, and then would have to go to the grocery store to purchase more food. The tenant claimed that, as a result, and because he did not own a vehicle, he was required to spend a significant amount more on transportation than he had budgeted. He submitted receipts with his application ([REDACTED] #2) showing that he had incurred \$478.32 to rent a car to do this excess grocery shopping. He is also seeking an additional \$250.00 in compensation for inconvenience.

The Landlord's Position

Mold

54. The landlord stated that he had provided the tenant with instructions on how to alleviate moisture buildup at the unit and that he had also given him 2 dehumidifiers for his use during this tenancy. He claimed that none of his tenants, either before or after this tenancy, had an issue with mold and he claimed that the tenant must have been doing something in the house to cause that problem. He suggested that the moisture was caused by having the windows open and not having the unit adequately heated.
55. The landlord also argued that the mold in the master bedroom was a non-toxic variety and should not have caused any health issues. He conceded that [REDACTED] has promised to address the matter over Christmas holidays while the tenant was away, but he claimed that there was too much moisture on the walls for her to carry out any painting.

Kitchen Fan

56. The landlord acknowledged that the kitchen fan was not operational. He stated that it was disconnected several years ago when the kitchen was renovated. He pointed out that the fan on the range hood was operational, however.

Faulty Plugs

57. The landlord stated that he did not know why it was that [REDACTED] did not have the outlets inspected as the tenant had requested. But he claimed that after the tenant moved out, the breakers were inspected and it was found that none of them were tripped and claimed that outlets were working and that his new tenants have not made any complaints about them to him.

Unrepaired Bathroom

58. The landlord acknowledged that the seal on the sink needed to be repaired, and that there was only a temporary repair made to it during this tenancy, but he decided that as it required a major repair that would have taken several days, he would wait until the tenancy ended to have it addressed. However, he claimed that that sink was still functional during the tenancy. He did have that sink and vanity replaced after the tenant moved out.
59. The landlord reiterated his earlier argument that as the clog resulted from the tenant's use of the tub, he is not responsible for repairing it.

Unsafe Backyard

60. The landlord claimed that a lot of work had been carried out on the yard before the tenant moved in and he stated that all the glass and other junk had been removed. He also claimed that pea gravel had been put down in places and fences and been installed to seal off any dangerous areas.
61. The landlord acknowledged that the backyard is more difficult to mow than the front lawn, but he denied that there was any agreement with the tenant that he was not responsible for mowing the grass in the backyard. He also claimed that the tenant had accepted the backyard, as it was, when he moved in and he agreed with the landlord that he would take steps to prevent his children from entering any dangerous areas.

Fridge Condensate

62. The landlord acknowledged that the refrigerator was old and that it may soon need to be replaced. He also acknowledged that it was a small-size refrigerator but pointed out that the tenant was aware of the size of it when he decided to move into the apartment.
63. He stated that he had cleaned, defrosted and drained the refrigerator for the tenant and claimed that on inspection it was found to be functioning and working within its operating parameters.
64. The landlord suggested that the problem may not be with the refrigerator but rather with the fact that the tenant had caused the humidity and moisture levels in the apartment to rise too high.

Analysis

65. The landlord acknowledged that there was some mold in the unit and there was a build up of moisture. I determined in the previous section, though, that the landlord had not established that the tenant was responsible for these issues and it seems probable then that the problem lies with the rental unit itself. The

tenant's submissions that there was a lack of mechanical ventilation in the apartment and that he was prohibited from opening the windows are likely related to that buildup of moisture and there was also evidence submitted showing that there were leaking pipes at the apartment which may also have played a role. In any case, and whatever the cause, I agree with the tenant that his having to clean that mold would have been an inconvenience and that although █ had promised to have that issue addressed, no action was taken by her or the landlord.

66. There was also no dispute that the tub was clogged and that the sink had been leaking. Again, as I previously determined, the tenant is not responsible for these issues and I agree with him that the landlord had not lived up to his obligations in ensuring that that bathroom was maintained in a good state of repair. I also agree with the tenant that he was inconvenienced by the fact that he only had partial use of that bathroom for those 4 months.
67. For the inconvenience the tenant suffered as a result of the poor air quality, the mold and the ill maintained bathroom, I find that he is entitled to an award of \$600.00.
68. With respect to the other items—the electrical outlets, the backyard, the refrigerator—I find that insufficient evidence was presented at hearing to allow me to make a determination. The landlord testified that the outlets were working, that the refrigerator was operating normally and that he had carried out some work in the backyard to make it usable. Besides his testimony, the tenant presented almost no other corroborating evidence to establish his version of events or to allow me to make a determination in his favour.

Decision

69. The tenant's claim for compensation for inconvenience succeeds in the amount of \$600.00.

Issue 6: Security Deposit

70. The tenant paid a security deposit of \$975.00 on 11 September 2019 and a copy of the e-Transfer receipt was submitted with his application (█ #3). That deposit shall be disposed of as outlined in the summary, below.

Summary of Decision

71. The tenant is entitled to the following:

- a) Refund of Rent.....\$130.00
- b) Refund of Utilities\$72.68

c) Compensation for Inconvenience.....\$600.00
d) Refund of Security Deposit\$975.00

e) LESS: Damages..... (\$76.59)

f) Total Owing to Tenant.....\$1701.09

01 June 2021

Date



John R. Cook
Residential Tenancies Tribunal