

## Residential Tenancies Tribunal

[REDACTED] Decision 21-0016-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:05 pm on 04 March 2021 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. She was represented by [REDACTED] ("[REDACTED]").
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate.

### Issues before the Tribunal

4. The landlord is seeking the following:
  - An order for a payment of \$1511.83 in compensation for damages,
  - An order for a payment of rent in the amount of \$1900.00,
  - An order for a payment of late fees in the amount of \$80.00,
  - An order for a payment of \$206.94 in compensation for inconvenience, and
  - Authorization to retain the security deposit of \$600.00.

### 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 decision are sections 15, 19 and 32 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

7. 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) a respondent 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 her application stating that the tenant had been served with notice of the hearing, by e-mail, on 18 February 2021 and she has had 13 days to provide a response. A copy of that e-mail was also submitted with the landlord's application and she pointed out that that e-mail was provided to her in the 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.

### Issue 1: Compensation for Damages - \$1511.83

#### Relevant Submissions

8. The landlord stated that she had entered into a monthly rental agreement with the tenant on 13 November 2020 and a copy of that executed agreement was submitted with her application (█ #1). The agreed monthly rent was set at \$950.00 and it is acknowledged in the rental agreement that the tenant had paid a security deposit of \$600.00.
9. The tenant fell into rental arrears shortly after she moved in and on 13 January 2021 the landlord issued her a termination notice. A copy of that notice was also submitted with her application (█ #2). 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 24 January 2021. The tenant vacated on that date.
10. The landlord stated that after she had regained possession of the property she discovered significant damages which had been caused by the tenant and she submitted the following breakdown of the costs to carry out the required repairs (█ #3):
  - Replace flooring..... \$785.08
  - Baseboards and mouldings ..... \$182.96
  - Replace bathroom door ..... \$301.99
  - Deep cleaning..... \$241.80
  - Total..... \$1511.83

### Flooring

11. The landlord stated that the laminate flooring in one of the bedrooms at the rental unit had suffered some water damage, and she suggested that that damage was caused by the tenant's cats, as she had found a litter tray in that room. The landlord stated that the edges of each laminate floor board had started to lift as a result and she stated that this flooring now needs to be replaced. That work has not yet been carried out.
12. The landlord submitted a quote with her application (█ #4) showing that it would cost \$361.93 to purchase replacement flooring for that room and she estimated that it would take her 20 hours to remove the water damaged flooring and replace it with the newly purchased laminate.
13. The landlord stated that she did not know how old these floors were, but she stated that they were already in the unit when she purchased it in 2012.

### Baseboards

14. The landlord also complained that the baseboards in the living and laundry room had suffered water damage and she pointed to her photographs to corroborate that claim (█ #5). She again stated that she suspects that the tenant's cats were responsible for that damage.
15. The landlord stated that these baseboards were installed on 2019 and she pointed to her quote showing it would cost \$102.35 to purchase new baseboards and she figured it would take her 4 hours to have the baseboards removed and the new ones installed.

### Bathroom Door

16. The landlord pointed to her photographs showing that the bathroom door had a hole in it and that the door frame had also suffered extensive damage. Her submitted quote indicates that a new door would cost \$201.24 and she is also seeking \$100.75 in compensation for the 5 hours she anticipates it would take her to install it.
17. The landlord stated that she did not know the age of the door, but she testified that it was already there when she purchased the unit 9 years ago.

### Deep Cleaning

18. The landlord stated that there was urine and feces found in bedroom 1 after the tenant vacated and she testified that as a result there was a very bad odour throughout the house, requiring that she carry out a deep clean. She stated that she had to sweep and mop all the floors throughout the apartment and in bedroom 1 she had to wash down the walls and she stated that she even had to treat some areas with an enzyme cleaner.

19. The landlord testified that it took her and her boyfriend 12 hours to clean the unit and she is seeking \$241.80 in compensation for her personal labour.

## Analysis

20. 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*

21. Regarding the flooring, I accept the landlord's testimony in this matter and I find that these floors had suffered some water damage. Laminate flooring has an expected lifespan of 10 years and given that these floors were already 9 years old when the tenant moved out, I find that the landlord is entitled to a depreciated award of \$78.51 ( $\$785.08 \times 1$  year remaining in life span).
22. With respect to the baseboards, the landlord's photographic evidence shows that they had suffered significant damage during this tenancy and I agree with her that they need to be replaced. Based on a 10 year life span, I find that the landlord is entitled to a depreciated award of \$146.36 ( $\$102.35 + \$80.60$  for labour  $\times 8$  years remaining in lifespan).
23. I also accept the landlord's claim that she has to replace the bathroom door. As interior doors have an expected lifespan of 20 years, I find that she is entitled to an award of \$166.09 ( $\$301.99 \times 11$  years remaining in lifespan).
24. I also accept the landlord's testimony concerning the smell at the unit and I agree with her that the apartment would have required a deep clean to address that issue. I find that she is entitled to the \$241.80 she is claiming here.

### **Decision**

25. The landlord's claim for compensation for damages succeeds in the amount of \$632.76 determined as follows:

• Flooring.....	\$78.51
• Baseboards.....	\$146.36
• Bathroom door.....	\$166.09
• Cleaning .....	\$241.80
• Total.....	<u>\$632.76</u>

### **Issue 2: Rent - \$1900.00**

#### **Relevant Submissions**

26. The landlord stated that when the tenant moved in, she paid her rent for November 2020, as required.
27. She testified that no rent was paid for December 2020 or for January 2021. The landlord is seeking an order for a payment of rent in the amount of \$1900.00 for those 2 months (2 months  $\times \$950.00$  per month).

#### **Analysis**

28. I accept the landlord's claim that no rent was paid for those 2 months. As such, her claim succeeds.

## Decision

29. The landlord's claim for a payment of rent succeeds in the amount of \$1900.00.

### Issue 3: Late Fees - \$80.00

#### Relevant Submissions

30. The landlord has assessed late fees in the amount of \$80.00.

#### Analysis

31. 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.*

32. 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.*

33. As the tenant first fell into rental arrears in December 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

## Decision

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

### Issue 4: Compensation for Inconvenience - \$206.94

#### Relevant Submissions

35. The landlord stated that the tenant had left behind a significant amount of her personal possessions at the unit after she vacated. These items included beds,

mattresses, a TV and other pieces of furniture, as well as clothing, suitcases and boxes of furnishings.

36. The landlord testified that despite her attempts to make arrangements for the tenant to retrieve her possessions, she has made no effort to collect them and the landlord stated that she will soon be making application to the Director seeking permission to dispose of those items.
37. Instead of placing these items in a storage facility, the landlord kept them in a room in the rental unit after the tenant vacated. The landlord stated that as she was required to store these items for 30 days, she is entitled to compensation for the space they occupied during that period. She testified that U-Haul charges \$179.95 + tax per month for a storage locker and she is seeking that same amount in compensation for storing those items at the rental unit.

## **Analysis**

38. I accept the landlord's claim that the tenant had left behind a significant amount of her personal possessions and the landlord is correct that the *Residential Tenancies Act, 2018* does require that she safely store those items for 30 days.
39. But section 32 of that *Act* states that a landlord may recover the costs of storing those abandoned items in 1 of 2 ways: either by having the tenant pay those costs when she collects her items or, where they are not collected by the tenant, by selling the items.
40. The landlord estimated that the abandoned possessions are probably worth \$550.00 and she claimed that they could be sold on Kijiji or NL Classifieds. As the *Act* directs the landlord to recover the storage fees through the sale of the abandoned property, this portion of her claim does not succeed.

## **Decision**

41. The landlord's claim compensation for inconvenience does not succeed.

## **Issue 5: Security Deposit**

42. The landlord stated that the tenant had paid a security deposit of \$600.00 on 13 November 2020 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

## **Summary of Decision**

43. The landlord is entitled to the following:

a) Compensation for Damages.....	\$632.76
b) Rent.....	\$1900.00
c) Late Fees .....	\$75.00
d) LESS: Security Deposit ..... (\$600.00)	
e) Total Owing to Landlord .....	<u>\$2007.76</u>

04 June 2021

\_\_\_\_\_  
Date

[Redacted]  
\_\_\_\_\_  
John R. Cook  
Residential Tenancies Tribunal