

Residential Tenancies Tribunal

Application [REDACTED]
Application [REDACTED]

Decision 21-0062-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 13 July 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the tenant”, was represented at the hearing by [REDACTED]
3. The respondent, [REDACTED] was represented at the hearing by [REDACTED] hereinafter referred to as “the landlord”.

Issues before the Tribunal

4. The tenant is seeking the following:
 - An order for a return of missing possessions valued at \$3690.00;
 - An order for a refund of rent in the amount of \$800.00; and
 - An order for a refund of a \$400.00 security deposit.
5. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$3180.00;
 - An order for a payment of \$15,955.00 in compensation for damages;
 - An order for a payment of utilities in the amount of \$665.65; and
 - Authorization to retain the security deposit.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

7. Also relevant and considered in this case are sections 10, 31, 32, and 33 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

8. According to the lease submitted by the tenant, the landlord is named [REDACTED] [REDACTED] which is a division of [REDACTED]. On her application, the landlord identified her company as [REDACTED]. At the hearing, though, the landlord testified that the name of her property management company is actually [REDACTED] which she stated is a division of [REDACTED].
9. On her application, the landlord named the tenant's parents, [REDACTED] and [REDACTED] as tenants and respondents. Neither [REDACTED] nor [REDACTED] were listed as tenants in the submitted rental agreement, and I therefore struck their names from the landlord's application.

Issue 1: Refund of Rent - \$800.00

Issue 2: Payment of Rent - \$3180.00

Relevant Submissions

The Tenant's Position

10. With her application, the tenant submitted a copy of a rental agreement, showing that she had entered into a 1-year, fixed-term lease with the landlord, commencing 22 January 2019. The agreed rent was set at \$795.00 and on her application, the tenant stated that she had paid a security deposit of \$400.00.
11. The landlord filed an application with the Section in September 2020, seeking an order for possession of the rented premises, and on 20 October 2020 she entered into a mediated agreement with the tenant in which it was agreed that the tenant would vacate the premises on 30 November 2020.
12. [REDACTED] stated that on 26 October 2020, the tenant was admitted to hospital, and on 05 November 2020 her parents, [REDACTED] and [REDACTED] went to the rental unit and found that the doors had been locked and that the tenant's possessions were piled on the sidewalk in front of the apartment. [REDACTED] stated that a truckload of the tenant's possessions had already been taken to the dump by the landlord at that point, and her parents sorted through several garbage bags left on the sidewalk in an effort to salvage anything else of value.

13. ■ argued that as the landlord had changed the locks on 05 November 2020, and as the tenant no longer had use and enjoyment of the unit, that rent ought to be refunded to her.

The Landlord's Position

14. The landlord stated that she had been by the tenant's apartment in November 2020 and she saw that there was a person in the apartment who she believed was renting a room from the tenant. The landlord contacted the tenant's mother, ■, about the issue and she was told by her that that person was not supposed to be at the unit. ■ also told the landlord that she was not going to allow her daughter, the tenant, to return to the apartment as it was in such deplorable condition. The landlord took this to mean that the tenancy had ended.
15. The landlord stated that ■ then gave her permission to take possession of the rental unit and she also had her permission to dispose of the tenant's possessions.
16. The landlord argued that she had done nothing wrong and that the tenant's parents at no point complained to her about changing the locks on the apartment or about disposing of the tenant's possessions. She also pointed out that the tenant's parents had not called the police.
17. With respect to the issue of rent, the landlord stated that because of the damage caused to the property by the tenant during this tenancy, she was unable to put a new tenant in place until April 2021 and she suffered a loss of rental income for the months of December 2020 and January, February and March 2021. The landlord argued that she is not only entitled to retain the rent for November 2020, but she is also entitled to compensation for a loss of rental income for those additional 4 months—a total of \$3180.00.

Analysis

18. Based on the mediated agreement the landlord and tenant had entered into on 20 October 2020, this tenancy was not set to end until 30 November 2020. No evidence was presented by the landlord to show that either the landlord or the tenant had terminated this tenancy on any earlier date by issuing a valid termination notice under the *Residential Tenancies Act, 2018*.
19. With respect to the landlord's contention that ■ had given her permission to take possession of the unit on 05 November 2020, I did not find that claim credible. There was also no evidence presented by the landlord to establish that ■ was authorized to act on the tenant's behalf or to establish that either ■ or the tenant had given the landlord written permission to take possession on that date. The landlord also admitted at the hearing that she had not posted any notice that she would be entering the unit or any notice that she suspected that the tenant had abandoned the property.

20. I conclude, therefore, that the landlord's entry and seizure of the rental unit and seizure of the tenant's personal possessions was improper and in violation of sections 31 (abandonment of residential premises by tenant), 32 (abandoned personal property) and 33 (seizure of property) of the *Residential Tenancies Act, 2018*.
21. As the landlord had not properly terminated the rental agreement on 05 November 2020 and as the tenant no longer had use and enjoyment of the unit after that date, I agree with ■■■ that the tenant is entitled to a refund of the rent that she had paid for the period from 05 November to 30 November 2020. I calculate that amount to be \$689.00 (\$795.00 for November 2020 ÷ 30 days x 26 days).

Decision

22. The tenant's claim for a refund of rent succeeds in the amount of \$689.00.

Issue 3: Return of Missing Possessions - \$3690.00

Relevant Submissions

The Tenant's Position

23. With her application, the tenant submitted a list of her personal possessions ■■■ #1) which ■■■ stated had been removed from the property and disposed of by the landlord on 05 November 2021.
24. That list is made up exclusively of clothing, footwear, and toiletries, that ■■■ stated were disposed of by the landlord without the tenant's permission. It includes 23 different categories of items and the tenant estimated the costs of replacement for each missing item, with a range between \$25.00 and \$500.00. No estimates or receipts were submitted to substantiate the costs sought by her. ■■■ stated that the tenant does not have a lot of money and most of these items were supplied to her by her parents.

The Landlord's Position

25. The landlord stated that the tenant's parents were with her and her maintenance staff when they removed the tenant's belongings from the property. She claimed that they had taken whatever items they wanted from the unit and then they had given her permission to dispose of the rest. She claimed that at no point had they complained to her about disposing of these possessions and she stated that they were there for almost 2 days while the items were removed.
26. With respect to the list supplied by the tenant, the landlord stated that she did not know what items had been removed by her staff and she was unable to provide

any list of the items that were removed. She did claim, though, that the Timberland boots, which the tenant estimates to be worth \$300.00, were returned to her by her workers.

Analysis

27. Section 32 of the *Residential Tenancies Act, 2018* states that a landlord may only dispose of a tenant's abandoned personal property if she either has written permission of the tenant or if she has permission of the Director of Residential Tenancies.
28. No evidence was presented to establish that the tenant had abandoned the rental unit or that she had abandoned her personal possessions. Rather, I determined in the previous section that the landlord had improperly changed the locks on the rental unit and had improperly seized the tenant's property.
29. The landlord also acknowledged that she did not get the tenant's written permission to dispose of her items and she did not submit an itemized list of those possessions to the Director, or seek the Director's permission to dispose of them. The landlord stated the tenant's parents had given her permission to dispose of the tenant's property, but I did not find that testimony credible and no evidence was submitted by the landlord to corroborate her claim.
30. As the landlord had seized and disposed of the tenant's personal possessions, without her permission, and in contravention of the *Residential Tenancies Act, 2018*, I find that the tenant is entitled to the costs of replacement.
31. However, with respect to the costs the tenant is seeking here, no evidence was submitted to corroborate the costs the tenant is seeking or to establish the condition of those items. Furthermore, besides the list submitted by the tenant with her application, no other evidence was presented to establish that these items were in fact at the unit when the landlord entered. The tenant did not attend the hearing to provide any testimony regarding this matter and ■■■ did not have any first-hand knowledge of the contents of the property left at the unit. The tenant also did not call any witnesses concerning this issue.
32. Without that sort of evidence, I find that I cannot award her the full costs she is seeking here. Nevertheless, I do accept the tenant's claim that some of her possessions were improperly disposed of and I find that she is entitled to some award. I find that \$1000.00 is fair.

Decision

33. The tenant's claim for the costs of her missing possessions succeeds in the amount of \$1000.00.

Issue 4: Compensation for Damages - \$15,955.00

Relevant Submissions

The Landlord's Position

34. The landlord stated that after she had regained possession of the rented premises, she was required to carry out extensive cleaning and garbage removal and she was also required to repaint the whole unit and undertake significant repairs. With her application, the landlord submitted the following breakdown of the costs she incurred to carry out that work (█ #1):

- Garbage removal \$3480.00
- Yard clean up..... \$2200.00
- 10 sheets drywall \$800.00
- Painting of entire house \$2200.00
- Replace back door..... \$1200.00
- New flooring..... \$300.00
- Replace kitchen cupboards \$4600.00
- Replace light fixtures \$300.00
- Replace toilet..... \$375.00
- Front door glass replacement \$300.00
- Cleaning \$200.00

- Total\$15,955.00

35. With her application, the landlord submitted an invoice from █ (█ #2), showing that she was charged \$5680.00 to have garbage removed from the inside of the house and from the yard. According to that invoice, 18 truckloads of garbage was taken to the dump and she was charged \$200.00 per load. The landlord stated that as her property management company is a business, she cannot merely drop off garbage for free at the dump, but instead she is charged a tipping fee, based on the weight of the garbage she is disposing of. No receipts for those fees were submitted at the hearing. The submitted invoice from █ also shows that the landlord was charged for 52 hours of labour.

36. The landlord also submitted a second invoice from █ #5) showing that she was charged \$3600.00 to have the unit repainted and to have holes repaired with new drywall, to have new flooring installed in the kitchen, hallway and bathroom, and to replace 6 light fixtures.

37. The landlord stated that the rear door to the apartment also had to be replaced and she pointed to her submitted photograph of that door (█ #3). The landlord stated that the door was destroyed and that it could not be repaired but had to be replaced. With her application, she submitted an invoice (█ #4) which she

stated was from [REDACTED] showing that she had paid \$1200.00 for a replacement door.

38. The landlord also stated that the kitchen cupboards at the rental unit had to be replaced and she submitted another invoice ([REDACTED] #8), from [REDACTED] showing that she was charged \$4600.00 to have new ones installed. She pointed to a photograph showing the condition of the cupboards after she had regained possession of the unit ([REDACTED] #6) and she stated that the bottom of these cupboards were “beat up” and they could not be repaired. She testified that these cupboards were not in that condition when the tenant moved in and she submitted a before-picture to corroborate that claim.
39. The landlord also pointed to a photograph ([REDACTED] #10) showing the bathroom at the rental unit and in that photograph she pointed to a chunk of ceramic on the floor which she claimed was a broken piece from the top of the toilet. She submitted a receipt with her application ([REDACTED] #11) showing that she had paid \$300.00 to have that toilet repaired.

The Tenant's Position

40. [REDACTED] questioned the authenticity of the invoice submitted by the landlord from [REDACTED]. He stated that he had had called the telephone number on the invoice and he was told that he had dialed a wrong number. He also pointed out that the mailing address for that company, a post office box in [REDACTED] is the exact same address as the one the landlord had provided to this Board for her property management company. Furthermore, the description of the work carried out by that contractor is identical to the description found on the landlord's breakdown.
41. [REDACTED] also stated that he went online and looked up the telephone number provided on the invoice from [REDACTED] he was directed to a rental listing for a property located at [REDACTED] same street at the this rental unit. That listing provided 2 telephone numbers—that for [REDACTED] and the other was for [REDACTED] the landlord.
42. [REDACTED] also pointed out that the invoice stated that this company had removed “human and animal urine and feces” from the unit. But [REDACTED] complained that no photographic evidence was submitted by the landlord to corroborate that claim.
43. With respect to the rear door, [REDACTED] stated that while the tenant was in hospital, the landlord had contacted the tenant's mother, [REDACTED], and told her that someone had broken into the rental property. [REDACTED] stated that the damage to the door may have happened during that break-in.
44. Regarding the kitchen cupboards, [REDACTED] stated that he was unable to discern any damage in the photograph identified by the landlord. He acknowledged that the bottom of some cupboard doors do appear to have suffered some wear, but he

pointed out that that same damage can be seen in the landlord's before-picture. He also questioned the landlord on the date that these before-pictures were taken and he argued that they do not reflect the condition of the unit when the tenancy began. For instance, he pointed out that the colour of the paint on the walls is different in the photographs than what it was when the tenant moved in.

45. With respect to the submitted invoice from [REDACTED] [REDACTED] stated that he was unable to find any information about that company. No one answered the telephone number that was provided on the invoice and the address for that company is actually a motel in [REDACTED] which closed in 2019.
46. [REDACTED] also complained that the receipts the landlord had submitted for cleaning and for the new toilet were from the same receipt book and he again suggested that these were not legitimate.
47. He also stated that when the landlord had contacted [REDACTED] in November 2020, while the tenant was in hospital, she had stated to [REDACTED] at that time that the window to the front door was broken and she indicated that the unit had been broken into and that there was now someone in the unit that was not supposed to be there. [REDACTED] argued that much of the damage identified by the landlord in her application was actually caused after this break-in had occurred and was not caused by the tenant at all.

Analysis

48. 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 willful 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.

the Director. I cannot award the landlord costs for improperly seizing and disposing of the tenant's possessions.

52. Regarding the cupboards, I also agree with ■■■ that no significant damage is visible in the photographs submitted by the landlord. With respect to the before-pictures, the exit data indicates that those photographs were taken in 2014, 6 years before this tenancy began. Even so, I agree with ■■■ that there is not much of a difference in the condition of the cupboards in 2014 and 2020. I also share with ■■■ doubts about the legitimacy of the submitted invoice.
53. The receipts for the new toilet and the cleaning were also of little help in determining the costs the landlord had incurred to have that work completed. She stated that they were cash jobs and that it was her company that had issued these receipts. Besides the name of the plumber on the receipt for the toilet, there is no other contact information and no receipts were submitted showing the costs of purchasing a new toilet. Regarding the receipt for cleaning, there is also no contact information on that receipt and the name of the cleaner is illegible.
54. Regarding the rear door, the photograph identified by the landlord does show that there is a piece of board nailed to it, but other than that, I cannot discern any other damage and I was not persuaded that it had to be replaced.
55. I do agree with the landlord there are some holes in the walls at the property that needed repairing, that some plastering and painting is required and that some flooring needed to be replaced. According to the exit data, the photographs showing that damage were taken on 05 and 07 November 2020. No photographs were submitted to the Board, though, showing that any of that damage had occurred prior to the tenant entering the hospital or prior to her entering into the mediated agreement with the landlord. The photographs submitted by the landlord from September and October 2020 only show that there was some garbage inside the unit, on the exterior grounds of the property, and that there were syringes also left outside the unit. The striking contrast between those two sets of photographs does lend some credence to ■■■ contention that some of this damage was not caused by the tenant.
56. ■■■ has raised enough doubts in my mind about the legitimacy of the invoices submitted with the landlord's application that I find it probable that the landlord had not actually incurred all of the costs she is seeking here. He has also convinced me that not all of the damage was caused by the tenant but was probably caused after she was admitted to hospital and before the landlord had illegally taken possession of the property.
57. Some damage was probably caused by the tenant during her tenancy and the landlord would probably have incurred some costs to repair that damage. But based on the quality of evidence and testimony submitted by the landlord, and the fact that many of the invoices were probably not legitimate, it is difficult for me to make a determination as to what the tenant is responsible for or what costs the

landlord had actually incurred. And to reiterate, I cannot award the landlord the costs of seizing the tenant's property and disposing of it. As such, her claim does not succeed.

Decision

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

Issue 5: Utilities - \$665.65

Relevant Submissions

The Landlord's Position

59. With her application, the landlord submitted her billing history from [REDACTED] showing the charges she had incurred from 23 November 2020 through to 30 March 2021 at the rental unit ([REDACTED] #9). The total amount charged for those 6 bills comes to \$665.65.
60. The landlord argued that as she was unable to secure a new tenant for the property until April 2021, because of the damage caused to the property, she is entitled to the costs of the utilities she had incurred from the time the tenant moved out up to that date.

The Tenant's Position

61. [REDACTED] argued that the landlord is not entitled to any payment of rent or any payment for utilities after the tenant was illegally locked out of her unit.

Analysis

62. I determined in section 1, above, that the landlord had acted in contravention of the *Residential Tenancies Act, 2018* when she entered and seized the tenant's unit and her personal property. I also determined there that as the tenant no longer had use and enjoyment of her apartment, she cannot be charged rent after the date of that seizure, 05 November 2020. For those same reasons, I also find that the landlord is not entitled to any payment of utilities after that date.

Decision

63. The landlord's claim for a payment of utilities does not succeed.

Issue 7: Security Deposit

64. It is acknowledged by both parties that the tenant had paid a security deposit of \$400.00 in January 2019. As the landlord's claim has not succeeded, she shall return that deposit to the tenant as outlined in this decision and attached order.

Issue 8: Hearing Expenses

65. The tenant paid a fee of \$20.00 to file this application. As her claim has been successful, the landlord shall pay that hearing expense.

Summary of Decision

66. The tenant is entitled to the following:

- a) Refund of Rent..... \$689.00
- b) Compensation for Missing Possessions \$1000.00
- c) Refund of Security Deposit \$500.00
- d) Hearing Expenses \$20.00

- e) Total Owing to Tenant..... \$2209.00

05 January 2022

Date

