

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0430-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:02 pm on 02 November 2020 via teleconference.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as "landlord1" and "landlord2", respectively, participated in the hearing.
3. The respondents, [REDACTED] and [REDACTED] did not participate.

Issues before the Tribunal

4. The landlords are seeking the following:
 - An order for vacant possession of the rented premises,
 - An order for a payment of rent in the amount of \$2700.00,
 - An order for a payment of late fees in the amount of \$75.00, and
 - An order for compensation for damages in the amount of \$2631.97.

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 and 19 of the *Residential Tenancies Act, 2018*, rule 29 of the *Rules of the Supreme Court, 1986* and policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

7. The tenants were not present or represented at the hearing and I was unable to reach them 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 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 landlords submitted affidavits with their application stating that they had served the tenants, by e-mail, on 19 October 2020 and they pointed out that those e-mail addresses were provided to them in the submitted rental agreement. The tenants have had 13 days to provide a response. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.

8. Landlord1 amended their application at the hearing and stated that they were no longer seeking an order for vacant possession of the rented premises as the tenants moved out on 28 September 2020.

Issue 1: Compensation for Damages - \$2631.97

Relevant Submissions

9. Landlord1 stated that they had entered into a monthly rental agreement with the tenants on 13 September 2019 and a copy of that executed agreement was submitted with their application. The agreed rent was set at \$900.00 per month and it is acknowledged in the rental agreement that the tenants had paid a security deposit of \$450.00.
10. The tenants fell into rental arrears in July 2020 and on 17 September 2020 the landlords issued a termination notice to them, a copy of which was submitted with their application. 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 28 September 2020. The tenants vacated on that date.
11. Landlord1 stated that the tenants had caused a significant amount of damage to the unit during their tenancy and the landlords submitted the following breakdown of the costs to carry out repairs:

| | |
|------------------------------------|------------------|
| • Outside garbage removal..... | \$201.25 |
| • Inside garbage removal | \$575.00 |
| • Cleaning and plastering | \$644.80 |
| • Replace 2 closet doors | \$345.00 |
| • Replace 4 interior doors..... | \$331.20 |
| • Replace bathroom doorframe | \$44.72 |
| • Dispose of furniture..... | \$490.00 |
| • Total..... | <u>\$2631.97</u> |

Outside Garbage

12. Landlord1 pointed to a photograph submitted with her application showing that the tenants had left behind approximately a dozen garbage bags on the lawn outside their entrance door as well as some wood they had been using for a fire in the yard. She also complained that the garbage bin that the tenants had been supplied with was overflowing with garbage. Landlord1 stated that she had hired [REDACTED] to remove that garbage and she submitted an invoice showing that she was charged \$201.25.

Inside Garbage

13. Landlord1 also pointed to her submitted photographs which show that there were numerous bags of garbage inside the unit as well as loose garbage on the floors, in the closets, on furniture, and on other surfaces. She also complained that there were cigarette butts found all throughout the apartment even though their rental agreement indicated that smoking was not permitted. Landlord1 also complained that the tenants kept pets and she stated that animal feces was found all though out the apartment and it had contaminated the clothing and furniture they had left behind. [REDACTED] were also hired to remove the garbage, furniture and clothing found inside the unit and the landlords submitted a second invoice showing that they were charged an additional \$575.00.

Cleaning and Plastering

14. Besides the removal of all the garbage, landlord1 complained that the unit required a thorough cleaning after the tenants moved and she pointed to her submitted photographs showing the conditions of the floors, appliances, the bathroom, etc. She pointed out that there was animal feces all through the apartment as well as cigarette butts and ashes. She also complained that the refrigerator was so dirty that it took her almost 4 hours to clean it. She also pointed to her photographs which show that there were numerous dents and holes in the walls throughout the apartment which she stated were plastered by landlord2. With their application, the landlords had submitted a log showing that over a period of 3 days they had spent a total 32 hours cleaning and plastering. They are seeking compensation in the amount of \$644.80 in compensation for their personal labour (32 hours x \$20.15 per hour).

2 Closet Door, 4 Interior Doors, 1 Doorframe

15. Landlord1 also pointed to her photographs which show that one closet door had been broken up and that another had been contaminated by animal feces. Because of this damage, the landlords disposed of these doors and they are seeking \$345.00 for their replacement costs. Their photographs also show that the tenants had put holes in 4 interior doors. They are seeking \$331.20 for their replacement costs, but landlord1 stated that her painters may be able to repair them. These doors have not yet been replaced or repaired and the landlords

submitted no quotes to establish the costs they are seeking here. Landlord1 also stated that she did not know how old these doors were.

16. Regarding the doorframe, landlord1 pointed to 2 photographs showing that that frame had been split and cracked and she stated that it now needs to be replaced. That work has not yet been carried out. The landlords are seeking \$44.72 for a new doorframe but no quotes were submitted at the hearing.

Furniture Disposal

17. Landlord1 stated that the rental unit was fully furnished when the tenants moved in, except for some beds which the tenants had supplied themselves. Landlord1 stated that, except for a table and chair set, she had to dispose of all the furniture that the tenants had been supplied with as it was either damaged by the tenants or it was unhygienic as it was contaminated with animal feces. She pointed to her photographs showing these pieces of furniture and she is seeking the following compensation:

- Headboard..... \$40.00
- Dresser \$100.00
- Mattress and box-spring \$100.00
- Desk/hutch..... \$100.00
- Missing floor lamp \$20.00
- TV cabinet..... \$20.00
- End-table \$10.00
- Sectional sofa \$500.00

- Total..... \$890.00

18. No receipts or quotes were submitted at the hearing as landlord1 stated that she had purchased all of these items second-hand. She stated that she calculated that she is entitled to \$490.00 in compensation as she figured that that is the amount that she would be able to sell these items for on [REDACTED]

Analysis

19. 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

20. With respect to the garbage removal, I accept the landlords' evidence showing that the tenants had left behind a significant amount of garbage, both inside and outside. Their evidence also shows that there was animal feces found all throughout the unit and I accept landlord1's claim that it had likely contaminated the abandoned furniture and clothing. I therefore find that the landlords are entitled to the \$776.25 that they were charged to have that garbage removed (\$201.25 + \$575.00).
21. With respect to the cleaning, I also find that the landlords are entitled to the full costs that they are seeking here. Their photographic evidence shows the unit was left in a very unsanitary and dirty state, that there was animal feces left on the floors and that the major appliances had not been cleaned. That evidence also shows that the tenants had caused significant damages to the walls in the unit. A claim of \$644.80 for 32 hours of their labour to addresses those issues is more than reasonable.
22. Regarding the closets doors, the interior doors and the doorframe, I accept the landlords' evidence which shows that these items were damaged by the tenants during their tenancy and I find that the landlords are therefore entitled to the

replacements costs. However, as the landlords submitted no evidence (e.g., quotes or receipts) to establish the replacement costs they are claiming, that portion of their claim does not succeed.

23. Regarding the furniture, I also have to find that the landlords are not entitled to the costs they are seeking here as they presented no evidence to establish these replacement costs.

Decision

24. The landlords' claim for compensation for damages succeeds in the amount of 1421.05 determined as follows:

- Outside garbage removal..... \$201.25
- Inside garbage removal \$575.00
- Cleaning and plastering \$644.80

- Total..... \$1421.05

Issue 2: Rent - \$2700.00

25. The landlords submitted rent records with their application showing the payments they had received from the tenants since they had moved in. These records show that the tenants had not paid rent for the last 3 months of their tenancy: July, August and September 2020.
26. The landlords are seeking an order for a payment of \$2700.00 for those 3 months (\$900.00 per month x 3 months).

Analysis

27. I accept the landlords' evidence and testimony in this matter and I find that the tenants' owe rent for those last 3 months of their tenancy. As such, their claim succeeds.

Decision

28. The landlords' claim for a payment of rent succeeds in the amount of \$2700.00.

Issue 3: Late Fees - \$75.00

Relevant Submissions

29. The landlords have assessed late fees in the amount of \$75.00.

Analysis

30. 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.*

31. 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.

32. As the tenants have been in rental arrears since 14 July 2020, the landlords are entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 4: Security Deposit

34. Landlord1 stated that the tenants had paid a security deposit of \$450.00 on 16 September 2019 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlords' claim has been successful, they shall retain that deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses

35. The landlords submitted a receipt showing that they had paid \$20.00 to file this application and a receipt showing that they had paid \$20.00 to have their affidavit notarized by a Commissioner of Oaths. As the landlords' claim has been successful, the tenants shall pay these hearing expenses.

Summary of Decision

36. The landlords are entitled to the following:

- a) Compensation for Damages..... \$1421.05
- b) Rent..... \$2700.00
- c) Late Fees \$75.00
- d) Hearing Expenses \$40.00
- e) LESS: Security Deposit (\$450.00)
- f) Total Owing to Landlords..... \$3786.05

24 February 2021

Date



John R. Cook
Residential Tenancies Tribunal