

Residential Tenancies Tribunal

Application [REDACTED]
Application [REDACTED]

Decision 20-0552-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 am on 11 March 2021 via teleconference.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as “tenant1” and “tenant2”, respectively, participated in the hearing. The respondent, [REDACTED] hereinafter referred to as “the landlord” also participated.

Issues before the Tribunal

3. The tenants are seeking the following:
 - An order for a refund of the security deposit in the amount of \$550.00
 - An order for a payment of late fees in the amount of \$75.00,
 - An order for the costs of cleaning totalling \$322.00, and
 - An order for a payment of hearing expenses totalling \$67.14.
4. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$600.00
 - An order for a payment of late fees in the amount of \$75.00,
 - An order for a payment of \$1525.60 in compensation for damages,
 - Authorization to retain the security deposit, and
 - An order for a payment of hearing expenses totalling \$31.69.

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 are sections 15 and 54 of the *Residential Tenancies Act, 2018*.

Issue 1: Tenant's Claim for Late Fees - \$75.00

Relevant Submissions

The Tenants' Position

7. The tenants entered into a rental agreement with the landlord commencing 01 October 2019 and copies of those executed agreements were submitted with their application. According to those agreements, the rent is set at \$1100.00 per month and it is acknowledged in these agreements that the tenants had paid a security deposit of \$550.00.
8. On 12 September 2020 the tenants informed the landlord, by text-message, that they were terminating their agreement and that they would be moving on 15 October 2020. The tenants vacated on that date.
9. Tenant2 stated that the landlord had not returned the security deposit to them after they vacated the unit and he pointed out that, according to the *Residential Tenancies Act, 2018*, she was supposed to have returned it to them within 10 days of the date they moved.
10. Because the landlord had not returned the deposit to them within those required 10 days, the tenants have therefore assessed a late payment fee of \$75.00.

The Landlord's Position

11. The landlord stated that she was informed by staff with this Section that she had 1 year from the date the tenants moved out to make application to the Director seeking authorization to retain the deposit.

Analysis

12. Section 54 of the *Residential Tenancies Act, 2018* states that the minister may prescribe fees for the purposes of the *Act*. The minister has prescribed fees for filing applications, fees for subpoenaing witnesses, fees landlords may assess for the late payment of rent and fees landlords may assess for NSF cheques.
13. The minister has not prescribed a fee for the late return of a security deposit.

Decision

14. The tenants' claim for late fees does not succeed.

Issue 2: Cleaning Costs - \$322.00

Relevant Submissions

The Tenants' Position

15. The tenants stated that during the month of September 2019, the month before their tenancy began, they were working with the landlord to repair damages that had been caused to the unit by the previous occupants. They had also spent some time cleaning the unit during that period.
16. In support of that claim, the tenants pointed to a photograph of tenant2 scrubbing a floor.
17. Tenant2 stated that they had no agreement with the landlord that they would be compensated for their labour and no agreement that rent would be reduced in compensation for their work. Rather, tenant2 stated that he was very particular about the cleanliness of where he would be living and he carried out the work in the interests of having an apartment that lived up to their standards.
18. Tenant2 stated that although there was no agreement that he would be compensated for his work, he stated that he now believes he should have been paid for his labour.
19. The tenants calculated that they should be paid \$322.00 in compensation for cleaning the unit before they moved in and in support of that claim they submitted a quote from [REDACTED] showing that that is the amount they would charge to clean a 3 bedroom home.

The Landlord's Position

20. The landlord stated that she had an agreement with the tenants that their rent would be reduced by \$100.00 per month, from \$1200.00 to \$1100.00, for a period of 12 months, in exchange for the work they had done at the unit during the month of September 2019 before they took possession.
21. The landlord stated that the unit was fully cleaned before the tenants took possession of the unit on 01 October 2019 and she argued that it would have been thoroughly cleaned even if the tenants had not agreed to carry out that work themselves.

Analysis

22. Although no documentary evidence was submitted at the hearing to establish that the tenants and the landlord had entered into any agreement whereby the landlord would compensate them for the work they carried out at the unit during

September 2019, I cannot think of another plausible reason why they would have done that work in the first place.

23. But even if the tenants were doing this work out of “the goodness of their hearts”, as they claimed at the hearing, then I don’t see why they now feel they deserve compensation. If there was an agreement in place, and if the landlord did not comply with the agreement, then I could issue an order for the landlord to come into compliance. If there is no agreement, then the landlord has not committed any breach.

Decision

24. The tenant’s claim for the costs of cleaning does not succeed.

Issue 3: Compensation for Damages - \$1525.60

Relevant Submissions

The Landlord’s Position

25. The landlord stated that after the tenants moved out she was required to repair and paint a wall at the rental unit and she also discovered that they had caused damage to the downstairs laminate floor.

Repaint Wall

26. The landlord complained that the main wall in the living room had some scuff marks on it after the tenants moved out and she was required to repaint it. No photographs were submitted with her application showing this damage.
27. The landlord is seeking a payment of \$38.80 in compensation for 3 hours of her personal labour and she submitted a receipt with her application showing that she purchased a paintbrush for \$3.59. She stated that this wall was painted in September 2019 before the tenants moved in.

Flooring

28. The landlord also stated that the laminate flooring in the basement had suffered some water damage during this tenancy. She figured that something had either been spilled on that floor or there may have been a build up of moisture as a result of poor air circulation. The landlord stated that the affected area measures 2 ft by 8 ft.
29. With her application the landlord submitted a photograph showing that flooring. She stated that the floor was 7 years old and it was not damaged when the tenants moved in.

30. The landlord also submitted a copy of Rental Premises Condition Report that tenant1 had signed and in that report it is noted that there are “swollen floor boards” in the basement. The landlord stated that she had given that report to the tenants for them to fill out when they moved in, but she stated that they failed to return it to her and it was not signed by her. She also argued that the report should be disregarded as some of the damages noted in that report were repaired by her before the tenancy began.
31. The landlord stated that that floor has not yet been replaced. She is seeking \$58.20 in compensation for her labour to remove the flooring and baseboards and \$38.80 for her labour to reinstall the baseboards. She also submitted an estimate showing that she would be charged \$1022.22 for new laminate floors for that basement.

The Tenants' Position

Repaint Wall

32. Tenant2 acknowledged that there was some minor scuffing on that wall and he stated that it was caused by their couch. He stated that these scuff marks were minor, that they were not caused deliberately and that they ought to be regarded as being the result of normal wear and tear.

Flooring

33. The tenants denied that they had caused any damage to the basement floor during their tenancy. Tenant2 stated that that room was used a storage room and pointed to his photographs of that room which were taken during their tenancy. He pointed out that the room was tidy and organized and that all the items stored in that room were placed on shelves and were not touching the floor.
34. Tenant2 testified that there was already some damage caused to that floor when they moved in and it was noted on the condition report provided to them by the landlord.

Analysis

35. 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

36. With respect to the wall, I find that the landlord has not submitted enough evidence to establish that the tenants had caused any significant damage to it. Without a photograph or some other form of evidence, I cannot determine if that scuffing had exceeded what would be deemed normal wear and tear, as the tenants claimed. Tenants cannot be held liable for normal wear which results from normal use.

37. I also find that the landlord has failed to establish that the tenants had caused any damage to the basement floor. The tenants stated that the floor was already damaged when they moved in and they pointed to the condition report to corroborate their claim. But if I refuse to give that condition report any weight, as the landlord has argued, then there is just no other evidence to corroborate her claim that it was undamaged when the tenants moved in. As it is the landlord who is alleging that the tenants had caused the damage, she has the burden of

proving that claim. Except for her testimony, which was contradicted by the tenants, no other evidence was submitted at the hearing which would allow me to make a determination.

Decision

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

Issue 4: Rent - \$600.00

Issue 5: Late Fees - \$75.00

Relevant Submissions

The Landlord's Position

39. On 12 September 2020 the tenants sent a text-message to the landlord informing her that they were terminating their rental agreement and that they would be moving out in the middle of October 2020. There were some showings of the unit after that date and on 14 September 2020 the landlord and tenants had the following text-message exchange:

Landlord: Rented for November 1st as they need a months notice. The house looks great and provided there is no damage from moving I would be good with 600 for Octobers rent if that works for you.

Tenants: Ok \$600 for October sounds good with us and can I just ask providing there's no damage upon moving out will we get the damage deposit back?

Landlord: Yes absolutely

40. The tenants moved out on 15 October 2020.

41. The landlord stated that the tenants had paid her \$600.00 in rent for October 2020, but she argued that she is entitled to a payment of an additional \$600.00 for that month, bringing the total to \$1200.00, as the tenants had caused damage to the floor in the basement and because the wall was scuffed.

The Tenant's Position

42. The tenants stated that they had an agreement with the landlord that they would only have to pay \$600.00 in rent for October 2020 so long as there was no damage at the unit. They denied that they had caused any damage to the basement floor.

Analysis

43. I find that there was an agreement between the landlord and tenants that they would only have to pay \$600.00 provided that there was no damage caused to unit.
44. There is no dispute that the tenants did pay \$600.00 for rent for October 2020 and I have determined that the landlord has failed to establish that they had caused any damage to the property.
45. Accordingly, I find that the tenants have lived up to their end of the agreement and the landlord is therefore not entitled to a payment of any additional rent for October 2020.

Decision

46. The landlord's claim for a payment of rent and late fees does not succeed.

Issue 6: Security Deposit - \$550.00

47. The tenants paid a security deposit of \$550.00 on 29 August 2019 and receipt of that deposit is acknowledged in the submitted rental agreements. As the landlord's claim for damages and rent has not succeeded, she shall return the full amount of that deposit to the tenants.

Decision

48. The tenants' claim for refund of the security deposit succeeds in the amount of \$550.00.

Issue 7: Hearing Expenses

49. The tenants submitted a receipt showing that they had paid \$13.79 to send the notice of the hearing to the landlord by registered mail and another receipt showing that they paid \$9.20 for 2 flash drives. As the tenants' claim for refund of the security deposit has been successful, the landlord shall pay these expenses.

Decision

50. The tenants' claim for hearing expenses succeeds in the amount of \$22.99.

Summary of Decision

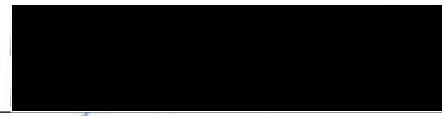
51. The tenants are entitled to the following:

- a) Refund Security Deposit\$550.00
- b) Hearing Expenses.....\$22.99

- c) Total Owing to Tenants\$572.99

12 March 2021

Date



John R. Cook
Residential Tenancies Tribunal