

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0161-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 23 June 2021 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. His spouse, [REDACTED] also participated in the hearing. They were represented by [REDACTED] of the law firm, [REDACTED].
3. The respondents, [REDACTED] hereinafter referred to as “the tenants”, did not attend the hearing.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$1500.00,
 - An order for a payment of \$12,927.00 in compensation for damages, and
 - Authorization to retain the security deposit of \$500.00.

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 is section 19 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 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 a respondent fails 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 landlord testified that he had served the tenants with notice of the hearing, by e-mail, on 08 June 2021, and a copy of that e-mail was submitted at the hearing. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issue 1: Compensation for Damages - \$12,927.00

Relevant Submissions

8. With his application, the landlord submitted a rental agreement (█████ #1) showing that he had entered into a 1-year lease with the tenants commencing 16 December 2018. The agreed rent was set at \$1000.00, to be paid in bi-weekly installments of \$500.00.
9. On 19 February 2021, the tenants sent an e-mail to the landlord informing him that they were terminating their agreement and they moved out 2 weeks later, on 05 March 2021.
10. The landlord stated that the tenants had caused significant damage to the property during their tenancy and with his application he submitted a quote from a contractor (█████ #2) stating that it would cost \$12,927.00 to carry out the following repairs:
 - Supply and install new front door
 - Supply and install 2 storm doors
 - Repair or replace kitchen cabinets
 - Refinish living room floor
 - Repair damaged floor in kitchen
 - Replace 3 bi-fold doors
 - Replace floor in back hall
 - Supply and install 2 glass closet doors
 - Replace laminate flooring in bedroom
 - Replace damaged electrical outlets, switches, and smoke detector
 - Plaster and paint entire unit
 - Replace bathroom and kitchen accessories

11. The landlord did not hire that contractor and instead he carried out the work himself.
12. With respect to the front door, the landlord stated that it had been kicked in by the tenants and it had to be replaced. No photographs were submitted showing that damage. The landlord stated that he bought a replacement door on-line, and installed it himself. He did not recall how much he had paid for the door and no receipt or invoice was submitted with his application. The landlord did not know how old the damaged door was and he stated that it took him approximately 4 hours to pick up a new door and install it.
13. With respect to the storm doors, the landlord stated that he disposed of the doors that were there and they have not been replaced. No photographs or quotes were submitted with his application.
14. The landlord also stated that the door face for the garbage drawer in the kitchen cabinets had been torn off, and the landlord had to refinish it and reinstall it. He also claimed that some other doors had to be tightened and the cabinets had to be cleaned. No photographs were submitted and the landlord did not recall how long it took him to carry out that work.
15. With respect to the living room floor, the landlord claimed that it was all torn up and he was required to sand it and refinish it. He stated that this damage was caused by the tenants dragging their furniture over it. He testified that it took about 4 hours to carry out that work. Those floors were last refinished 7 years ago.
16. The landlord also complained that the laminate floors in the kitchen and dining room area had become warped and the boards had separated. He testified that he had to remove and clean the separated boards and he then put them back into place. He stated that that work took him about 3 hours. These floors were also about 7 years old.
17. The landlord stated that he also had to rehang 2 closet doors which had been removed from a bedroom, and those doors, along with another closet door from the hallway, had to be repaired. He stated that the knobs were missing, they had been knocked off their hinges and the tracks were broken. The landlord stated that it took him approximately 8 hours to carry out that work. He stated the doors were 7 years old.
18. He also complained that the floor in the laundry room had suffered water damage and he surmised that this was caused by an overflow. The landlord stated that he was able to salvage this floor by drying it out and putting a coating over it afterwards. He stated that this work took him around 3 hours.
19. The landlord also stated that 2 glass closet doors were missing from the master bedroom. The landlord has not replaced those doors, but has instead hung some curtains in front of the closet.

20. The landlord stated that the floors in the master bedroom were heavily scratched, and he was required to clean and mop those floors and he put a new coating on them as well. That work took him 3 hours.
21. He also stated that he was required to paint the whole unit and he also had to plaster various holes that were found in the walls. The landlord stated that it took him 3 days to carry out the plastering and a whole week to paint. He complained that there were also dents and scratches on the walls and some of the walls were marked up. The landlord stated that the unit had been last painted approximately 4 years ago.
22. The landlord also complained that, in the bathroom, he was required to replace the shower curtains, a shower head, a towel rack, a toilet paper holder, some drain plugs and door stops. No receipts were submitted with his application.
23. Finally, the landlord testified that he spent a week and a half cleaning the unit. He stated that the tenants had left behind a significant amount of garbage and broken furniture and he was required to haul a full trailer to the dump for disposal. He also claimed that all the walls in the unit had to be washed down before they could be painted, and all the floors had to be mopped. He also testified that the cupboards under the sinks in the kitchen and the bathroom were very dirty and there was wax on a wall in the bathroom. The landlord also stated that the fridge and stove needed to be cleaned as well as the washing machine and dryer.

Analysis

24. 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.

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

25. As no receipts were submitted with his application, and as the submitted quote from the contractor does not break out the costs of materials for each individually claimed item, I have no grounds on which to grant the landlord an award for the costs of materials.
26. No photographs were submitted with his application showing the damaged items, either, but before- and after-videos were submitted after the hearing concluded [REDACTED] #3), and they do seem to corroborate the landlord's claim that there were some damages caused to the property and that the landlord had carried out the repairs described at the hearing. Accordingly, I will grant the landlord some compensation for his personal labour. Policy with this Section is that a landlord may claim up to \$20.75 for each hour of his personal labour.
27. Regarding the painting and the refinishing of the living room floor, though, I find that the landlord is not entitled to an award. As the expected lifespan of a paintjob is between 3 and 5 years, I am of the view that the landlord would soon need to repaint anyhow. Likewise, the finish on a hardwood floor has an expected lifespan of 5 years and the finish on these floors was at least 7 years old.
28. With respect to the other damages, I find that the landlord is entitled to \$1016.75 for his labour, determined as follows:

- Repair front door, 4 hours \$83.00
- Repair floors, 9 hours \$186.75
- Repair/rehang closet doors, 8 hours \$166.00
- Plastering, 8 hours \$166.00
- Cleaning, garbage removal, 20 hours \$415.00

- Total \$1016.75

Decision

29. The landlord’s claim for compensation for damages succeeds in the amount of \$1016.75.

Issue 2: Rent - \$1500.00

Relevant Submissions

30. The landlord testified that the tenants were paying their rent in bi-weekly installments of \$500.00, and he stated that they failed to pay the last 3 installments that came due before they vacated on 05 March 2021. Those installments were due on 23 January 2021, 06 February 2021 and 20 February 2021.
31. The landlord is seeking an order for a payment of \$1500.00 for those missed payments.

Analysis

32. I accept the landlord’s claim that the tenants had not paid their rent as required and based on his testimony, I find that the tenants owe him \$1500.00 in rent.

Decision

33. The landlord’s claim for a payment of rent succeeds in the amount of \$1500.00.

Issue 3: Security Deposit

34. The landlord stated that the tenants had paid a security deposit of \$500.00 and he submitted a receipt with his application (████ #4) showing that it was paid on 30 November 2018. As the landlord’s claim has succeeded, he shall retain that security deposit as outlined in this decision and attached order.

Summary of Decision

35. The landlord is entitled to the following:

- a) Compensation for Damages \$1016.75
- b) Rent Owing \$1500.00
- c) LESS: Security Deposit..... (\$500.00)
- d) Total Owing to Landlord..... \$2016.75

25 November 2021

Date

