

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0350-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:15 PM on 07 December 2021 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED] hereinafter referred to as “the landlord”. The respondent, [REDACTED] hereinafter referred to as “the tenant”, did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$2815.65,
 - An order for a payment of \$200.00 in compensation for damages,
 - An order for a payment of \$20.00 in hearing expenses.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this decision is policy 9-3: Claims for Damage to Rental Premises and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her by telephone at the commencement of the hearing. 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 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 was served with the claim and notice of the hearing, by e-mail, on 25 August 2021, and a copy of that e-mail was attached to that affidavit. 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 - \$200.00

Relevant Submissions

7. The landlord stated that she had entered into a monthly rental agreement with the tenant on 01 November 2019. The agreed rent was set at \$401.00 per month.
8. The tenant fell into rental arrears shortly after moving into the unit and on 13 May 2021 the landlord issued her a termination notice, A copy of that notice was submitted with the landlord's application (█ #1). 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 25 May 2021. The tenant vacated on 31 May 2021.
9. After the tenant moved out, the landlord was required to dispose of some garbage and other personal items that the tenant had left behind and, according to her submitted breakdown (█ #2), she was also required to replace 3 missing smoke alarms.
10. Regarding the smoke alarms, the landlord testified that these alarms were hard-wired in to the electrical supply in the apartment and that they are more expensive than typical battery-powered alarms. With her application, she submitted photographs showing that these alarms were missing and she testified that the costs she is seeking, \$100.00 for those 3 alarms, is the rate billed by her maintenance staff according to their Client Back Charges list.
11. The landlord also stated that the tenant had left behind some furniture, some garbage and clothing, and her submitted photographs also show that items were left in the cupboards and the refrigerator. The landlord testified that the tenant had given her written permission to dispose of these items and she stated that she was billed another \$100.00 by her maintenance staff.

Analysis

12. 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

13. The photographic evidence submitted by the landlord clearly shows that the tenant had left behind several pieces of furniture and some personal belongings, as well as a significant amount of garbage. An award of \$100.00 to have those items removed and disposed of is more than reasonable. I also accept her claim that her maintenance staff billed her \$100.00 for the costs of purchasing and installing 3 smoke alarms. As such, the landlord's claim succeeds.

Decision

14. The landlord's claim for compensation for damages succeeds in the amount of \$200.00.

Issue 2: Rent - \$2815.65

Relevant Submissions

15. With her application, the landlord submitted a copy of her rent records (█#4) showing the payments she had received from the tenant since January 2020, at which point she had a balance of \$0.65.
16. According to these records, the tenant frequently missed her monthly rent payments, and the arrears had been steadily accruing since she moved in. For instance, the records show that no rent was paid between May and September 2020, and when her rent payments resumed, she was not paying off those accumulated arrears and would frequently fail to pay the required monthly rent of \$401.00.
17. The last payment the tenant made was \$300.00, on 18 March 2021, leaving her with a balance of \$2013.65. The tenant stayed on at the unit for another 2 months, bringing the balance to \$2815.65. The landlord is seeking an order for a payment of that amount.

Analysis

18. I accept the testimony and evidence of the landlord in this matter, and I agree with her that the tenant has not been paying her rent as required. The landlord's records show that the tenant has an outstanding balance of \$2815.65 for the period ending 31 May 2021, and her claim therefore succeeds in that amount.

Decision

19. The landlord's claim for a payment of rent succeeds in the amount of \$2815.65.

Hearing Expenses

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

Summary of Decision

21. The landlord is entitled to the following:

- a) Compensation for Damages \$200.00
- b) Rent \$2815.65
- c) Hearing Expenses \$20.00

- d) Total Owing to Landlord..... \$3035.65

13 October 2022

Date

