

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0351-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:06 AM on 28 February 2022 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED] hereinafter referred to as “the landlord”. The respondents, [REDACTED] hereinafter referred to as “tenant1” and “tenant2”, respectively, were also attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of \$365.12 in compensation for damages,
 - An order for a payment of rent in the amount of \$2002.63,
 - An order for a payment of late fees in the amount of \$75.00, and
 - Authorization to retain the \$862.50 security deposit.

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 section 15 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The landlord amended her claim at the hearing and stated that she was now only seeking a payment of \$378.08 in rent.

Issue 1: Rent Owing - \$378.08

Relevant Submissions

The Landlord's Position

7. The landlord stated that she had entered into a 1-year, fixed term rental agreement with the tenants on 01 September 2020, and a copy of the executed lease was submitted with her application (██████ #1). The agreed rent was set at \$1150.00 per month, and it is acknowledged in the lease that the tenants had paid a security deposit of \$862.50.
8. In July 2021, the tenants contacted the landlord and informed her that they were moving out of the rental unit as soon as they found a new apartment. On 05 August 2021, the landlord issued the tenants a termination notice, requiring that they vacate on 16 August 2021. The landlord stated that tenants moved out on 10 August 2021.
9. The landlord stated that the tenants' rent was paid and up-to-date for the period ending 31 July 2021, but she claimed that no rent was paid for August 2021. She is seeking an order for a payment of a pro-rated in the amount of \$378.08 for the first 10 days of August 2021.

The Tenants' Position

10. Tenant1 acknowledged that they had not paid their rent for August 2021. She stated that because they had received an eviction notice from the landlord they had to use their money to find a new apartment.

Analysis

11. There is no dispute that the tenants had not paid their rent for August 2021. As the landlord is seeking rent up to 10 August 2021, I find that she is entitled to a payment of \$370.97 ($\$1150.00 \times 10/31$).

Decision

12. The landlord's claim for an order for a payment of rent succeeds in the amount of \$370.97.

Issue 2: Late Fees - \$75.00

13. The landlord has assessed a late fee of \$75.00.

Analysis

14. Section 15 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.*

The minister has prescribed the following:

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.

15. As the tenants have been in arrears since 02 August 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Compensation for Damages - \$365.12

Relevant Submissions

The Landlord's Position

17. After the tenants moved out, the landlord stated that she was required to clean the apartment and dispose of some garbage left behind, and she also discovered that the tenants had caused damage to the front step.

Repair front step

18. The landlord stated that the tenants had damaged the wooden front step with their U-Haul truck when they were moving out of the unit, on 10 August 2021, and she pointed to her submitted photographs (■■■■#2) showing that damage. The landlord sent one of her maintenance persons to the unit to repair the step

and she claimed that it took 4 hours to carry out that work. The landlord is seeking \$142.31 in compensation.

Cleaning and garbage removal

19. The landlord pointed to her photographs showing the condition of the property on 10 August 2021, when she took possession of the unit. She pointed out that there were several bags of garbage left at the unit, there was garbage left on the floors, items in the kitchen cupboards, several cases of empty beer bottles and laundry detergent bottles. She also claim that there was dust on the floors and the kitchen appliances had not been cleaned. The landlord stated that her maintenance worker removed the garbage shown in the photographs then he cleaned the unit. She stated that it took him 6 hours to carry out that work, and she is seeking \$221.81 in compensation.

The Tenants' Position

Repair front step

20. Tenant1 acknowledged that they had damaged the front step with their U-Haul truck. She claimed that she had intended to return to the unit to repair it herself, but she claimed that it was repaired by the landlord before she had a chance. With respect to the costs the landlord is seeking here, tenant1 stated "that's what the damage deposit is for."

Cleaning and garbage removal

21. Tenant1 stated that some of the items shown in the photographs were already there when she moved in. She testified that the items shown in the cubby-hole under the stairs, including Christmas decoration, did not belong to them, and she also claimed that the cases of beer bottles were not theirs.
22. Tenant1 also claimed that she returned to the unit on 11 August 2021 and carried out the cleaning and removed the garbage, and she argued that the landlord's maintenance worker did not do any cleaning on 10 August 2021, the day the photographs were taken. She also pointed out that, as per the landlord's termination notice, they did not have to vacate the property until 16 August 2021 and the landlord should not have been in her unit taking photographs or carrying out repairs prior to that date, without notice.

Analysis

23. 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

24. With respect to the front step, the tenants acknowledged that they were responsible for this damage and they did not dispute the costs the landlord is seeking here. As such, that portion of the landlord's claim succeeds.
25. Regarding the cleaning and the garbage removal, I accept tenant1's claim that some of the items were already at the unit when she moved in, and there was no report of any incoming inspection to contradict that claim. I also agree with tenant1's argument that the landlord ought not to have entered the unit on 10 August 2021, without the tenants' consent, and I find that the photographs submitted by the landlord only shows the condition of the property while they were still in the process of moving. As such, that claim does not succeed.

Decision

26. The landlord’s claim for compensation for damages succeeds in the amount of \$142.31.

Issue 3: Security Deposit

27. The tenants paid a security deposit of \$862.50 on 18 August 2020 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord’s claim for rent, late fees, and damages has succeeded, that deposit shall be disposed of as follows:

- a) Refund of Security Deposit \$862.50
- b) LESS: Rent Owing (\$370.97)
- c) LESS: Late Fees..... (\$75.00)
- d) LESS: Compensation for Damages (\$142.31)
- e) Total Owing to Tenants..... \$274.22

22 November 2022

Date

