

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0392-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:16 PM on 12 January 2022 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED] hereinafter referred to as “the tenant”, was not in attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of \$3342.00 in compensation for damages,
 - An order for a payment of rent in the amount of \$850.00, and
 - Authorization to retain the \$425.00 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 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 him 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 respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he has been properly served. The landlord submitted affidavits with his application stating that the tenant was served with the application, by e-mail, on 25 September 2021, and a copy of that e-mail was submitted with his application. 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 his absence.

Issue 1: Compensation for Damages - \$3342.00

Relevant Submissions

7. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant on 08 January 2021, and a copy of the executed lease was submitted with his application (████ #1). The agreed rent was set at \$850.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$425.00.
8. The landlord stated that he contacted the tenant in July 2021, after he had failed to pay his rent for that month, and the tenant informed him that he had not been living at the unit for several weeks and that he was now moved out. The landlord testified that the tenant told him that if there were any possessions belonging to the tenant left at the unit, the landlord had his permission to dispose of them. The landlord took possession of the unit on 04 July 2021.
9. Besides the possessions the tenant had left behind, the landlord stated that the tenant had caused other damages to the unit, and with his application, he submitted the following breakdown of the costs to carry out repairs (████ #2):
- Removal of abandoned property \$300.00
 - Second stage cleaning \$225.00
 - Plaster and painting of wall damages \$1800.00
 - Replace blinds, door, shelf \$465.80
 - Flea infestation treatment \$552.00
- Total \$3342.00

Remove abandoned property

10. The landlord pointed to his submitted photographs (████ #3) showing the condition of the rental unit after the tenant moved out. He pointed out the unit was left in a deplorable state, and there was food left in the refrigerator, in the oven, and in several pots and pans. He also stated that in the kitchen the tenant had left behind various kitchen items, cans of food and cooking accessories. There was also garbage and laundry found throughout the apartment, and the tenant had left behind a couch, a damaged mattress, cables, a kitty litter tray and various

toiletries. With his application, the landlord submitted an invoice from [REDACTED] ([REDACTED] #4) showing that he was charged \$300.00 to have those items removed.

Cleaning

11. After the garbage, rotten food, and other possessions were removed from the unit, and after the other required repairs were completed, the landlord again hired [REDACTED] to clean and sanitize the rental unit. His submitted invoice shows that he was charged \$225.00 to have that cleaning carried out. The landlord stated that the tenant had done no cleaning before he vacated and the whole apartment had to be cleaned. This included all of the kitchen appliances, all of the floors and windows in the unit, the bathroom and all the cupboards.

Plaster and painting

12. The landlord stated that the rental unit was last painted just before the tenant moved into the unit. He pointed to his photographs, taken after the landlord regained possession of the unit, showing that there were dozens of large holes in the walls all throughout the unit, on just about every wall, and even in the closets. The landlord stated that it was obvious that this damage was deliberate and malicious, and was likely the result of the tenant punching and kicking the walls. The landlord hired a contractor to repair and plaster the drywall throughout the unit and then it was all repainted. His invoice shows that he was charged \$1800.00 to have that work carried out.

Replace blinds, door, and shelf

13. Other photographs identified at the hearing show that the blinds in the kitchen, bedroom and living room were twisted, broken and cut up, and the landlord suspected this damage was caused by the tenant's cat. He also pointed out that the shelf in the laundry room had been torn off the wall, and the bedroom door and closet door were both broken and hanging off their hinges. He submitted another invoice showing that he was charged \$465.00 by a contractor to supply and install 4 window blinds, 1 colonial door, shelves, and hinges and a lockset for the door.

Flea infestation treatment

14. The landlord also complained that after he had regained possession of the unit, it was discovered that the unit was infested with fleas. As a result, the landlord hired a pest control company to treat the apartment, and his submitted invoice shows that he was charged \$552.00. The landlord pointed out that the tenant had kept a pet cat at the unit, and he was informed by the pest control company that the unsanitary condition of the apartment, and the fact that there was rotting food left around the apartment, contributed to that problem.

Analysis

15. 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*

16. The photographic evidence submitted by the landlord clearly shows that the unit was left in a very poor condition when the tenant moved out. These photographs show that no cleaning had been carried out, that there was rotting and moldy food left behind, that there were dozens of holes in the walls, and that other

damages were caused to the blinds, doors and shelves, and that there was a significant amount of garbage and other personal items left behind by the tenant.

17. Based on that evidence, I agree with the landlord that cleaning and garbage removal was required, that the unit needed to be repainted and that repairs were had to be carried out to the doors and blinds. I also accept the landlord's claim that there was an infestation of fleas at the unit and his hired pest control company had to conduct a flea treatment. The landlord provided receipts and invoices for all of this work, showing that he incurred \$3342.00 to restore the unit to the condition it was in when the tenant moved in in January 2021. As such, the landlord's claim succeeds in that amount.

Decision

18. The landlord's claim for compensation for damages succeeds in the amount of \$3342.00.

Issue 2: Rent - \$850.00

Relevant Submissions

19. The landlord testified that he was able to secure a new tenant for this unit on 01 August 2021, but he complained that it sat vacant during July 2021 and he suffered a loss of rent of rental income during that month. He argued that the tenant is responsible for that loss, and for 2 reasons.
20. First, the landlord pointed out that the tenant moved out of the unit, without notice, despite the fact that he had entered into a 1-year lease with him that was not set to expire until 31 December 2021. Secondly, the landlord argued that the unit was in such poor condition when he regained possession on 04 July 2021, he was required to carry out significant repairs. Those repairs took all of the month of July 2021 and he argued that he could not have put new tenants in place any sooner than 01 August 2021.
21. The landlord is seeking an order for a payment of \$850.00 in rent for the month of July 2021.

Analysis

22. I agree with the landlord's argument here. Because he was in a lease, the tenant could not have terminated his agreement before December 2021. And as the unit was in such a state of disrepair, I agree with the landlord that it would have been almost impossible to put new tenants in before 01 August 2021. As such, the landlord's claim succeeds.

Decision

23. The landlord’s claim for a payment of rent succeeds in the amount of \$850.00.

Issue 3: Hearing Expenses

24. The landlord had paid a fee of \$20.00 to file this application. As the landlord’s claim has been successful, the tenant shall pay that hearing expenses.

Issue 4: Security Deposit

25. The landlord stated that the tenant had paid a security deposit of \$425.00 on 08 January 2021, and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord’s claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

26. The landlord is entitled to the following:

- a) Compensation for Damages\$3342.00
- b) Rent Owing \$850.00
- c) Hearing Expenses \$20.00
- d) LESS: Security Deposit..... (\$425.00)
- e) Total Owing to Landlord.....\$3787.00

17 November 2022

Date

