

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0449-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:45 a.m. on 29-November-2021.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant” did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and there wasn't a phone number provided. 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 an affidavit (LL#01) with his application stating that he had served the tenant with notice of the hearing, by bringing it to him and serving in person on 15-November-2021. 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.

Issues before the Tribunal

5. The Landlord is seeking:
 - Compensation for damages \$1,650.00
 - Security Deposit applied against monies owed
 - Vacant possession of the premises
 - Hearing expenses reimbursed

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outline in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 8: Types of rental agreement, Section 10: Statutory Conditions, and Section 21: Notice where premises uninhabitable.

Issue 1: Compensation for damages \$1,650.00

Relevant Submissions

8. The landlord submitted documentation (LL#05) outlining the rental terms between himself and the tenant. He testified that they had entered a verbal rental agreement for a monthly term in September 2020. He said that rent is set at \$775.00 and utilities are not included. He said that he received the first month's rent and a security deposit of \$400.00 on 01-September-2020. He is still in possession of the security deposit.
9. The landlord stated that he had noticed a constant decline in the state of the apartment conditions, he saw that the apartment was unclean and there were damages. On 07-September-2021 the landlord posted a notice (LL#02) identifying all the issues and telling the tenant that he was to clean the apartment and repair and damages. He said that the apartment was completely renovated before the tenant moved in a year ago: the flooring was all new and the apartment was freshly painted. The landlord said when he told the tenant he had to clean the apartment and complete the repairs, the tenant became confrontational.
10. The landlord said no effort was made by the tenant to resolve the issues and on 15-September-2021, he personally gave the tenant a termination notice citing Section 21(2) and Section 8(2).
11. On 26-September-2021, the landlord gave a 24 hour notice to enter the apartment to once again see if the tenant had done any work.
12. On 27-Septmeber-2021 the landlord entered the apartment and completed an inspection. He had given the tenant a written notice to clean and repair (LL#02) on 07-September-2021, there were still no repairs or cleaning completed.
13. The landlord provided the following list:
 - Replace living room carpet..... \$360.00
 - Repair kitchen floor..... 50.00
 - Clean carpet in the apartment..... 240.00
 - Paint living room, bathroom, kitchen, and bedroom.... 600.00
 - Remove garbage (2 trips to dump)..... 100.00

- Replace kitchen counter top..... 300.00
 - **Total** **\$1,650.00**

Replace living room carpet \$360.00

14. The landlord provided photos to support his claim of damage to the carpet. The first photo (LL#08) shows multiple cigarette burns next to a chair and a table with an ashtray full of cigarette butts. There are numerous holes in the carpet.
15. Another picture submitted by the landlord, shows what appears to be yellow paint on the carpet (LL#10).
16. The landlord said he had replaced all of the carpet in the apartment just before the tenant moved in. He said that the tenant had told him that he wasn't a smoker when he first took possession of the apartment. He estimated the cost to replace the carpet (\$360.00) in the room with the cigarette burns, from the cost he incurred last year to replace all of the carpet.
17. The tenant is still living at the apartment and the landlord would have this work completed after the tenant moves.

Repair kitchen floor \$50.00

18. The landlord submitted a picture of the tear in the kitchen floor ((LL#11). He pointed out that it is next to the stove. The landlord said that this is new flooring installed just before the tenant took possession of the apartment.
19. The landlord intends to clean and glue the flooring himself in order to fix the tear. He estimated it would take him about 2 hours to pick up the supplies and repair the floor.

Clean carpet in the apartment \$240.00

20. The landlord submitted pictures of the carpet (LL#10) showing the carpet had yellow paint stains and ash. He said he would either hire a company to clean the carpets throughout the apartment, or he would rent a machine to do this himself.
21. The landlord estimates it would take approximately 4 hours to do this work himself.

Paint living room, bathroom kitchen and bedroom \$600.00

22. The landlord provided numerous pictures of damage to the walls (LL#7, LL#09, LL#10, LL#11 and LL#12). In these pictures there is grease on the walls, a hole and feces smeared and spattered on the walls.
23. The landlord feels that all of these areas would have to be cleaned and painted. He had the entire apartment painted prior to the tenant moving in.

24. The landlord said that it would be difficult to get someone in this time of year and that he will have to complete this work himself. He said it is a three bedroom apartment and it will take him at least 2 days (16 hours) to finish this work.

Two trips to the dump \$100.00

25. The landlord said he expects he will have to bring a lot of garbage to the dump once the tenant moves out. He believes he can do this in about two trips.

Replace kitchen counter-top \$300.00

26. The landlord submitted pictures of the kitchen counter-top (LL#11 & LL#12) showing burn marks from cigarettes.
27. The landlord said he would have to pay to purchase a new counter-top as well as have it installed. He estimated the cost.

Analysis

28. 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.

10.(1)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.

29. In all instances reported by the landlord, he has shown, by entering photographs, as well as, submitting the written correspondence with the tenant, that the damage exists and that the tenant is responsible through a willful or negligent act. The landlord however, does not provide receipts or estimates for the repairs that he will need to do to make the apartment fit for habitation. The lack of receipts/estimates will be relevant in this decision.
30. Replace living room carpet \$360.00: the landlord has shown that the carpet in one of the rooms is peppered with cigarette burns, it has clearly been destroyed. The landlord states that all this carpet was replaced just prior to the tenant taking possession one year ago. The landlord did not provided an estimate or last year's receipt for the carpet.

Subsequently, I'm unable to find for the landlord, as I have no information on the cost of the replacement of the carpet in this room. The landlord's request for \$360.00 for carpet fails.

31. Repair kitchen floor \$50.00: the landlord said that this flooring is also only one year old. He said that he would be able to clean the floor and then fix the tear with glue. He said that this process would take him approximately 2 hours. I accept that this work would take approximately 2 hours to complete. It is the policy of Residential Tenancies to pay minimum wage + \$8.00 an hour. Presently that equals \$20.75. 2 hours x \$20.75 = \$41.50. Therefore the landlord's claim succeeds in the amount of \$41.50.
32. Clean carpet in the apartment \$240.00: the landlord may, in his preparation for a new tenant, clean the carpets prior to their arrival, however, the smearing of feces throughout the apartment is of concern and therefore additional sanitizing would be necessary. The landlord believes that it would take him approximately 4 hours to rent the equipment, clean the apartment and return the equipment. This estimate seems to be more than reasonable for the task at hand. The landlord did not provide information on this cost of renting the equipment, therefore only his time would be considered. 4 hours x \$20.75 = \$83.00. The landlord's claim succeeds in the amount of \$83.00.
33. Paint living room, kitchen, bathroom and bedroom \$600.00: the landlord believes that this time of year it would be difficult to find someone to paint the apartment, he would therefore do this work himself. As stated in paragraph 32, this might be something a landlord would do prior to a new tenant moving in, and according to our policy paint should last 3 -5 years, however the concern would be the health risk from feces on the walls and it would be necessary to sanitize, as well as, paint this area. Further to this, the landlord has stated that the entire apartment was painted last year. He estimates that it would take him two days to clean and paint these areas. I accept his estimate for the time required to complete this work. He did not provide estimates for the cost of paint or supplies. Therefore the landlord's claim for completing this work succeeds in the amount of: 16 hours x \$20.75 = \$332.00.
34. Two trips to the dump \$100.00: the landlord believes that there will be garbage left behind once the tenant moves. I find that there is no way to predict this future event with accuracy, as the tenant is still in possession of the apartment and therefore, the landlord's claim fails.
35. Replace kitchen counter-top \$300.00: the landlord has shown through his submitted pictures (LL#11 & LL#12) that there are burn marks in the kitchen counter-top. The counter top appears to be very worn and outdated and potentially needed to be replaced anyway. Also, the landlord did not provide any receipts for the damages incurred. Due to the lack of receipts and the age of the countertop, I find that the landlord's claim for replacement of the kitchen counter-top fails.

Decision

36. The landlord did not provide receipts for the above listed damages, he will therefore only be reimbursed for his time to complete the repairs as follows:
 - Repair kitchen floor..... \$ 41.50

- Clean carpet..... 83.00
- Painting..... 332.00
- Total..... \$456.50

Issue 2: Security deposit applied against monies owed \$400.00

Relevant Submissions

37. As per paragraph 8 and a submitted document showing the rental terms (LL#05) the landlord stated that the tenant paid a security deposit of \$400.00.

38. The landlord has incurred loss due to damages in the apartment; see paragraph 36.

Analysis

39. The landlord’s claim for damage has been successful and he shall retain the security deposit as per section 15 of the *Residential Tenancies Act, 2018*, below:

15. (10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit

Decision

40. The landlord’s claim to retain the security deposit of \$400.00 against damages incurred succeeds.

Issue 3: Vacant Possession of premises

Relevant Submissions

41. The landlord submitted a termination notice to the tenant (LL#03). It is addressed to the tenant and included the address of the rental unit, it cites Section 21(2) and Section 8 (2), as the reason for termination. It is dated for the 15-September-2021 with a termination date of 21-September-2021.

42. As indicated in paragraph 9 the landlord was noticing the decline in the condition of the apartment and told the tenant to make repairs and clean at the beginning of September 2021, on 07-September-2021 the landlord affixed a notice to his door listing all issues he wanted fixed.

43. The landlord said he served the tenant with the termination notice personally on 15-September-2021, as there was no effort to repair or clean the apartment.

44. The landlord confirmed he was using the outdated *Act* for his reference.

Analysis

45. The landlord cited Section 8 as one of the reasons for eviction. Section 8 in the *Residential Tenancies Act, 2018*, describes the types of rental agreements and does not cover reasons for termination of a rental agreement and is therefore not relevant to this file.
46. The landlord also listed Section 21(2) of the *Residential Tenancies Act, 2018*.

Notice where tenant's obligation not met

22. (2) Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

47. Section 10 states
Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

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.

48. The landlord's photographic evidence displaying the conditions in the apartment indicate that the tenant is in violation of Section 10.
49. The landlord submitted the notice that he affixed to the tenant's door (LL#02) dated for 07-September-2021. When he returned on 15-September-2021 there were no changes to the condition of the apartment and he served the tenant the termination notice at that time.
50. Section 20 of the *Residential Tenancies Act, 2018*, states:

Notice where material term of agreement contravened

20. (2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes a material term of a rental agreement, the landlord may give the tenant written notice of the contravention, and if the tenant fails to remedy the contravention within a reasonable time after the notice has been served, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises.

51. 07-September-2021 the landlord gave the tenant written notice of the damages to the apartment and demanded that the tenant repair or clean the issues listed, a week later no action was taken to remedy the issues. I find that this is a reasonable amount of time for some action to have been taken. The termination notice was then given personally to the tenant on 15-September-2021, it is a valid notice and the tenant should have vacated the apartment on or before 21-September-2021.

Decision

- 52. The landlord’s claim for an order for vacant possession succeeds.
- 53. The tenant shall vacant the premises immediately.
- 54. The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 4: Hearing Expenses

- 55. The landlord incurred the cost of filing for the hearing expense and provided a receipt for the \$20.00 (LL#06), as the claim is successful the landlord may retain \$20.00 from the Tenant’s security deposit.

Summary of Decision

- 28. The landlord is entitled to the following:
 - An order for vacant possession of the rented premises, the tenant shall move immediately
 - The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.
 - The tenant shall also pay the landlord \$76.50 and the landlord may retain the security deposit of \$400.00 for damages.

Compensation for damages.....	\$456.50
Hearing expenses.....	20.00
Less security deposit.....	<u>(400.00)</u>
Total.....	<u>\$ 76.50</u>

December 2, 2021
Date

