

Residential Tenancies Tribunal

Applications [REDACTED]

Decision 21-0461-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 07 February 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” did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$3,324.00;
 - An order for a payment of \$920.00 in compensation for damages;
 - An order for payment of late fees in the amount of \$75.00; and
 - Authorization to retain the \$600.00 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 case is sections 14, 15 and 19 of the *Residential Tenancies Act, 2018* 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. 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 she sent the application and notice of the hearing to the tenant by email, on 26 December 2022, and testified that service was made to the e-mail address provided in the rental agreement. 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: Rent - \$3324.00

Relevant Submissions

7. The landlord stated that she had entered into a 1-year, fixed-term lease with the tenant on 01 June 2021, and a copy of the executed agreement was submitted with her application (L#1). The agreed rent was set at \$1250.00 and it is acknowledged in the lease that a security deposit of \$600.00 was paid on 25 May 2021.
8. The landlord testified that the tenant vacated the rental premises on 05 October 2021 after not living in it for multiple weeks. The landlord testified that a termination notice for non-payment of rent was issued on 31 August 2021 with a stated move out date of 11 September 2021 (L#2).
9. The landlord submitted a copy of her rent ledger with her application (L#3) showing the payments she had received from the tenant since she moved in to the rental unit. According to these records rent was paid for June 2021 and the tenant made a partial rent payment of \$627.00 for July 2021. No payments have been made since.
10. The landlord calculates that the tenant owes her \$3123.00 for the period ending 30 September 2021 and she is also seeking a pro-rated rent of \$201.00 for October 2021.

Analysis

11. I accept the landlord's testimony in this matter and I agree with her that the tenant has not paid her rent as required. Based on her records, the tenant owes \$3123.00 and I also agree that she is entitled to a pro-rated rent of \$201.62 for the first 5 days of October 2021 ($\$1250.00 \text{ per month} \div 31 \text{ days} \times 5 \text{ days}$).

Decision

12. The landlord's claim for rent succeeds in the amount of \$3324.62.

Issue 2: Late Fees - \$75.00

Analysis

13. 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.

14. As the tenant has been arrears since 02 July 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Compensation for Damages - \$920.00

Relevant Submissions

16. The landlord stated that after the tenant moved out she hired a company to remove the garbage and personal possessions left behind by the tenant, and they also carried out some carpet cleaning. She submitted an invoice with her application showing that she was charged \$920.00 to have that work carried out.

Disposal of garbage

17. The landlord submitted a series of photos taken at the rental premises the tenant moved out (L#5). These photographs show that the tenant had left behind a significant amount of garbage and personal items. According to the submitted invoice, her contractors spend 10 hours removing those items from the rental unit and she was charged \$350.00 for that work. She was also charged \$250.00 to take all items to the dump and dispose of them and this charge included 3 hours of labour.

Carpet Cleaning \$200.00

18. The invoice also shows that the landlord was charged \$200.00 to have the carpet cleaned. She testified that these carpets were “black” with dirt, and she stated that this was notable because the tenant only lived there for a few months. In support of her claim, the landlord pointed to her submitted photographs showing the carpets in several of the rooms (L#5).

Analysis

19. 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

20. I accept the landlord's testimony in this matter and her evidence shows that the tenant left behind a substantial amount of garbage at the unit which needed to be removed from the property and taken to the dump. Her evidence also shows that the carpets were heavily stained and required cleaning. The landlord's invoice shows that she was charged \$920.00 to have that work carried out and the claim therefore succeeds in that amount.

Decision

21. The landlord's claim for compensation for damages succeeds in the amount of \$920.00.

Issue 3: Security Deposit - \$600.00

22. The landlord stated that the tenant paid a security deposit of \$600.00 on 25 May 2021 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim for rent and damages has been successful, she shall retain that deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses

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

Summary Decision

24. The landlord is entitled to a payment of \$3739.62, determined as follows:

- a) Rent Owing\$3324.62
- b) Late Fees\$75.00
- c) Compensation for Damages\$920.00
- d) Hearing Expenses.....\$20.00
- e) LESS: Security Deposit..... (\$600.00)
- f) Total.....\$3739.62

03 November 2022

Date

