

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0499-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:18 a.m. on 28-March-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 I was unable to reach him by telephone at the start 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 he has been properly served. The landlord submitted an affidavit (LL#01) with her application stating that she had served the tenant with notice of the hearing, electronically by sending it to the tenant’s email. The landlord said that the tenant provided her the email address and it has been used for communication in the past. She sent him the email on 21-December-2021 at 3:09 p.m. 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:
 - Rent \$450.00
 - Damages \$340.00
 - Hearing expenses reimbursed \$20.00

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined 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 10: Statutory conditions and Residential Tenancies Policy 9: Claims for Compensation.

Issue 1: Rent \$450.00

Relevant Submissions

8. The landlord provided text messages (LL#02) between herself and the tenant outlining the rental agreement terms. They had a verbal agreement for a monthly rental agreement. The tenant paid \$900.00 a month, which includes utilities. He moved in on 27-March-2020, and his rental agreement began on 01-April-2020. His rental period is from the 1st day of the month to the last day of each month. Rent is due the 1st day of the month. There was no security deposit paid.
9. The landlord said that prior to 01-February-2021, she gave the tenant 3 months' notice. At that time the tenant also gave notice and said he would be moving before 01-March-2021. The landlord accepted the tenant's notice. She said that the tenant actually was moved out on 14-March-2021.
10. The landlord said the tenant had paid ½ of March's rent; \$450.00. They had conversations, through text (LL#03), where she told him he has to pay for the entire month of March, because he continued to live in the apartment during March. He does agree in the messages to pay her the other half of the rent \$450.00 after he gets paid; he doesn't pay this money.
11. The landlord went on to say that he left the unit requiring cleaning, as well as, with a hole in the wall that needed to be repaired. This work took until the end of the month to have completed and the apartment wasn't ready to be rented until this was done.
12. In the past, she had used this apartment as an Airbnb and she listed it again, it was rented in May 2021.
13. The landlord is seeking the \$450.00 that has not been paid for March rent.

Analysis

14. According to the rental agreement the tenant's rent is due in full on the first day of the month, the tenant did not vacate the premises before the start of the rental period and the landlord informed him that he would be expected to pay the rent for the month of March. The tenant agreed to those terms paragraph 10. I therefore find that the tenant does owe the landlord \$450.00 for rent.

Decision

15. The landlord's claim for rent succeeds in the amount of \$450.00

Issue 2: Damages \$340.00

Relevant Submissions

16. The landlord submitted receipts for repairs to the wall (LL#04) as well as a receipt for cleaning (LL#05).
17. The landlord said that when the tenant was in the apartment he had two visitors in the apartment, one pushed the other, who knocked the couch into the living room wall and made a hole in the wall. She said that the tenant attempted the repair the wall, but actually made the wall worse. They agreed that she would have someone fix the patchwork.
18. The landlord did not provide a condition report or pictures, she did however, submit the text thread (LL#03) where the discussion about the repair to the wall not being acceptable, to show that the repair was the responsibility of the tenant and that he agreed to the work being done.
19. The landlord attached a receipt for \$230.00 from [REDACTED] (LL#04) for this work.
20. The landlord said that there was a lot of cleaning required in the apartment after the tenant left. She provided pictures of the condition of the apartment showing that the cleaning wasn't done by the tenant before leaving the apartment (TT#03). She hired cleaners to do this work and submitted the receipt (LL#05) for \$220.00. She offered, in the text thread with the tenant (TT#03), to pay half of this bill and is only seeking \$110.00 from the tenant for this work.

Analysis

21. As per Section 10, of the Residential Tenancies Act, 2018, the tenant is responsible to maintain the apartment in a clean condition and repair any damages.

Statutory conditions

10. 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.

22. The landlord said that the tenant did make an attempt to repair the hole in the living room wall, however, his attempt did not meet an acceptable standard. The hole is in the main living area in the apartment and could impact potential renter's interest in renting.

23. 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.

24. The tenant does agree with the landlord hiring someone to repair the wall, he takes responsibility for the damage (LL#03) and the landlord does provide the receipt for the work that was completed. Additionally, there is no consideration for depreciation, as according to the National Association of Home Builders, walls should last the lifetime of the home.

25. The landlord has meet the burden of proof; the tenant is responsible for the cost of repairs to the wall, \$230.00.

26. The landlord also submitted the receipt (LL#05) for the cost of having the apartment cleaned. She also included the pictures that she had sent to the tenant (LL#03) in their text thread, showing that the apartment had not been cleaned. The landlord agreed in the text (LL#03) to pay half of the \$220.00.

27. As shown in paragraph 25, Section 10 states that it is the responsibility of the tenant to keep the apartment clean. As this is the tenant's responsibility and as the pictures provided (LL#05) clearly show that the apartment wasn't cleaned, the tenant will be responsible for \$110.00 of the cleaning cost.

28. The tenant shall pay the landlord \$230.00 for the cost of the repair to the wall and \$110.00 for the cost of the cleaning of the apartment.

Decision

29. The landlord's claim for damages succeeds in the amount of \$340.00.

Issue 3: Hearing expenses reimbursed \$20.00

30. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#06) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

31. The tenant shall pay \$810.00 to the landlord as follows:

Rent	\$450.00
Damages	340.00
Hearing expenses	<u>20.00</u>
Total	<u>\$810.00</u>

April 6, 2022 _____
Date

