

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0577-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:02 a.m. on 03-February-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference

Preliminary Matters

4. The landlord provided an affidavit (LL#01) stating that he served the tenant in person, with notification of this hearing, on 21-January-2022. The tenant confirmed that he received good service.
5. The landlord amended his claim to include damage to the post box on the outside of the house. His claim increased from \$1,180.00 to \$1,280.00.

Issues before the Tribunal

6. The landlord is seeking:
 - Damages \$1,280.00
 - Security deposit applied against monies owed \$300.00
 - Premises vacated.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, and Section 22: Notice where tenant's obligation not met.

Issue 1: Damages \$1,280.00

Landlord's Position

9. The landlord provided a written rental agreement that he has with the tenant (LL#02). He said that the tenant moved in around the 1st of August 2020. They have a monthly agreement that runs from the 1st day of the month to the last day. The rent, \$700.00, includes utilities and is due the first day of each month. He said that the tenant paid a security deposit of \$300.00 before moving in and he is still in possession of that deposit.
10. The tenant rents a room in a house with 3 other tenants. Each tenant pays for their own room, there is a shared kitchen and common area. Currently, the tenant is the only person renting his room, the other tenants have moved.
11. The landlord provided a list of damages (LL#03) that he is seeking compensation for, as follows:

Item	cost
Mailbox	50.00
Drywall	200.00
Microwave	120.00
Front door	350.00
electric heater	150.00
Clean apartment / remove debris	300.00

12. The landlord submitted a picture (LL#04) of the mailbox on the front of the house. Presently, he said it is completely off the house. He said that the mailbox is approximately 4 years old. He believes that it would cost \$50.00 to replace. He has not fixed this yet and therefore doesn't have a receipt. The landlord is unsure who knocked the mailbox off the house.
13. The landlord is requesting \$200.00 to repair the drywall in the common area. He submitted a picture (LL#05), it appears that someone has punched or kicked holes in the drywall. The landlord didn't provide a condition report, but he says that he did a walk through with the tenant when he moved in two years ago and that everything was in good condition at that time.

14. He said that he would pay someone else to plaster and paint, he doesn't have an estimate, but he believes it would cost approximately \$200.00 for the repair. He said that he saw this damage in November 2021. He said that there is a camera in the common area, however, someone pointed it towards the wall so he is unsure who did the damage.
15. The landlord said that the microwave was destroyed, he said it was only 6 months old when the tenant's moved in. He said he knew it was broken in September 2021. He has not replaced the microwave but believes it would cost \$120.00 to get another one. He doesn't know how it was broken.
16. The landlord said that the glass is broken in the front door, someone has covered the hole with plywood. He said that the door is only 6 years old. He said that this happened in September 2021 and it has not been replaced, so he doesn't have a receipt. He said that he believes that the cost to replace the door is \$350.00.
17. The landlord said that the electric heater in the common area is broken. He reports that the heater is below the window that overlooks the roof that the tenant has used for barbeques. He believes that when people are coming and going through the window they are stepping on the heater. He believes it would cost \$150.00 to replace the heater. He doesn't have a receipt.
18. The landlord said that there is a lot of garbage to be removed, as well as, all the damaged items will have to be disposed of. This will mean either a garbage pick-up or a delivery to the dump. He is requesting \$300.00 to do this work.
19. The landlord said that he gave notice to the three tenants for a Request for Repairs (LL#06). He said he posted it on the door and also spoke to this tenant about it. The request is signed on 30-November-2021 and the landlord said it was served on 01-December. The timeframe for the repairs are from 01-December-2021 to 04-December-2021.
20. The landlord said that he returned to the house on 03-December-2021 and no work was done on the repairs.

Tenant's Position

21. The tenant agrees with the terms of his rental agreement; he believes he moved in on the 07-August-2020.
22. The tenant said that the last of the other tenants moved out in January 2022.
23. The tenant said that the mailbox was already damaged, it had no cover, and was falling off the house. He has no idea what happened to the mailbox.
24. The tenant did not dispute that the drywall in the common area was in good condition when he moved in. He did state that another renter did the damage to the drywall.

25. The tenant disputes that the microwave was 6 months old when he moved in; he believes that it would have been closer to 10 years old. He said another tenant threw the microwave and broke it.
26. The tenant said that the glass was broken in the front door when another tenant was in an altercation with someone else from the community. The other person punched out the glass during the fight. The tenant said he is the person who covered the hole with plywood.
27. The tenant acknowledges that he goes out on the roof for barbeques, but so does everyone else. He points out that this heater is in the common area and accessible to everyone. He said he has no idea if the heater is broken, because none of the heaters in the common area are turned on and they don't have access to the thermostat to turn them on.
28. The tenant said that he has cleaned up the rooms of the other tenants. That he has belongings in the common area as he is packing to leave.
29. The tenant said he never saw a Request for Repairs notice.

Analysis

30. Section 10 of the Residential Tenancies Act, 2018, 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:

1. Obligation of the Landlord -

(a) The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.

(b) Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.

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.

31. This house is rented by the room. The landlord has separate agreements with each of the tenants. The tenants rent their room, the rest of the home is considered a common area that everyone has access to, but no one has sole rights to. The tenants are responsible to keep the premises in a state of good repair, but it is also incumbent upon the landlord to do the same.

32. 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)
33. The landlord was able to show that the damage exists, however, on the other 2 counts he fails; he did not submit estimates or receipts for any of the damages, he has not completed any repairs, which is his obligation under Section 10 (1), as shown above, and he has not shown that any of this damage was the responsibility of the tenant or of one of his guests.
34. The tenant has disputed that the damages were his responsibility. He has been able to identify incidents where other tenants or community members, brought into the home by other tenants, did this damage. Further to this, the tenant claims to have cleaned up behind the other tenants after they moved and he also placed plywood over the broken window in the door.
35. Finally, the landlord gave the tenants a request for repairs on 01-December-2021. The repairs were to be completed on 04-December-2021. The landlord said that when he was there on 03-December-2021 none of the repairs were done. Technically, the tenants still have another full day to comply with the request.
36. The landlord's claim for damages fails. He did not meet the burden of proof that the tenant is responsible for these damages.

Decision

37. The landlord's claim for damages fails.

Issue 2: Security deposit applied against monies owed \$300.00

Decision

38. The landlord had requested to retain the security deposit against monies owed for damages. As his claim for damages fails, paragraph 37, he will not retain the security deposit against these damages.

Issue 3: Vacant Possession of the Rental Premises

Landlord's Position

39. The landlord submitted a termination notice (LL#07). The notice is on a landlord's notice to terminate early – cause form. The reason for the termination is failure to keep premises clean and repair damages.

40. The landlord signed, dated and delivered this notice on 03-December-2021. The notice is addressed to this tenant, as well as, the former two tenants. The termination date is for 10-December-2021.
41. The landlord said that when he went to the house, none of the repairs that he requested on the Request for Repairs form (paragraph 19 [LL#06]), were completed.
42. The landlord said that he personally handed it to the tenant. The tenant is still living there.

Tenant's Position

43. The tenant acknowledges that the landlord handed him the notice. Upon receiving the notice he attended our office to receive information on how to proceed.
44. The tenant said he is still living there, but moving immediately after this hearing. He has his belongings packed.

Analysis

45. The notice served to the tenant is under Section 22, of the Residential Tenancies Act, 2018; it states:

Notice where tenant's obligation not met

22. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.

(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.

(3) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the landlord;

(b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and

(c) be served in accordance with section 35.

46. The Statutory condition outlined in Section 10.2 is as follows:

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.

47. The landlord attempted to have the tenant clean the house and repair the damages, as stated in paragraph 19. He served the tenants with a Request for Repairs on 01-December-2021. He determined at that time that they had until 04-December-2021 to take care of the issues identified.
48. The landlord stated that when he went to the house on 03-December-2021 no action had been taken. At that time he served the tenant with the termination notice signed, served and dated on 03-December 2021 with a termination date of 10-December-2021.
49. The issue with the termination notice for failure to keep the premises clean and repair damages is, the landlord had determined that the tenants had until 04-December-2021 to make these changes. The second notice (for termination) is reliant upon the conditions outlined in the first notice (request for repairs) and should reflect the time frames given for each step. He therefore cannot take action for this issue until the tenants have had the full allotted time to complete the task.
50. As the landlord did not give the tenants until the end of 04-December-2021 to complete the repairs and do the cleaning, therefore the termination notice for not completing repairs and cleaning is invalid.

Decision

51. The termination notice dated 03-December-2021 with a termination date of 10-December-2021 is not a valid notice.

Summary of Decision

52. The landlord's request for repairs fails, and;
53. The termination notice dated 03-December-2021 with a termination date of 10-December-2021 is not a valid notice.

February 10, 2022

Date

