

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0589-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 16 March 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 \$2126.44 in compensation for damages,
 - An order for a payment of rent in the amount of \$650.00, and
 - Authorization to retain the \$490.00 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 section 32 of the *Residential Tenancies Act, 2018*, 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. With his application, the landlord submitted an affidavit stating that tenant had been served with the application, by e-mail, on 07 January 2022, and a copy of that e-mail was submitted with the 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.

7. The landlord amended his application at the hearing and stated that he was now seeking a total of \$3041.95 in compensation for damages.

Issue 1: Compensation for Damages - \$3041.95

Relevant Submissions

8. The landlord stated that he had entered into a monthly rental agreement with the tenant, commencing 01 February 2021, and a copy of that executed agreement was submitted with his application (█ #1). The agreed rent was set at \$650.00 per month, and the landlord testified that the tenant had paid a security deposit of \$490.00.
9. The landlord stated that because the tenant was smoking in the unit, he terminated their rental agreement, and the tenant was supposed to vacate the unit on 01 November 2021. Because the tenant had not removed all of his belongings, the landlord did not regain possession of the unit until 09 November 2021.
10. The landlord testified that some cleaning was required after the tenant moved out, and there were some other damages that had to be repaired, and with his application he submitted a breakdown of the costs he had incurred to have this work carried out (█ #2):

• Lock for front door	\$26.44
• Cleaning	\$200.00
• Paint and plaster	\$1000.00
• Carpet in bedroom	\$500.00
• Blinds	\$200.00
• Storage fees.....	\$200.00
 Total	<u>\$2126.44</u>

11. In support of the costs the landlord is seeking here, he submitted an invoice at the hearing, from █, showing that he was charged \$396.75 for the costs of having carpet supplied and installed at the unit. He also submitted an invoice, from his own company, █ showing that he charged himself \$2645.00 to have the remaining work carried out.

Lock for front door

12. The landlord stated that the tenant had not returned the keys to the property when he moved out, and the landlord had to have the locks changed. He stated that the lock itself cost \$24.00 and he had to pay someone to have it installed. According to the invoice from his company, he charged himself \$100.00 for the new lock and the labour to install it.

Cleaning

13. The landlord stated that the unit was “filthy” when he took possession on 09 November 2021, and he and his co-landlord were required to spend 6 hours each cleaning the property. He stated that there was a strong smell of marijuana in the unit, and all the walls had to be washed down in an attempt to remove that smell. The landlord also complained that there was rotten food in the refrigerator, there was a strong smell of urine in the bathroom, and all the floors at the unit needed cleaning. According to his submitted invoice, the landlord’s company charged him \$200.00 to carry out the cleaning. No photographs were submitted with his application.

Paint and plaster

14. The landlord complained that the tenant had hung some pictures on the walls, leaving behind some holes that had to be plastered, and he also complained that there was a hole in a bi-fold door. In addition to that damage, the landlord stated that all the walls, ceilings, doors and trims had to be painted because of the smell of smoke in the property. The landlord stated that it took him and his co-landlord 16 hours each to plaster and repaint the property. According to his submitted invoice, he charged himself \$750.00 to do that work. No other receipts were submitted with his application and no photographs were submitted showing the condition of the walls or doors. The landlord stated that this unit was last painted just before the tenant moved in.

Carpet

15. The landlord stated that the carpet in the bedroom was “filthy” and he figured the tenant never removed his outdoor footwear while living at the unit. He stated that that carpet could not be cleaned and had to be replaced, and he submitted an invoice showing that he was charged \$396.75. No photographs were submitted showing the condition of the carpet when the tenant moved out. The landlord stated that this carpet was approximately 2 years old when the tenancy began.

Blinds

16. The landlord also claimed that he was required to replace all the blinds at the unit because they smelled of cigarette smoke and he stated that these blinds were brand new when the tenant moved in. The landlord pointed to his invoice from his company showing that he was charged \$150.00 to have new blinds installed at the unit. He stated that it took approximately 2 hours for 2 people to install these new blinds.

Storage fees

17. The landlord testified that the tenant had left behind some of his personal possessions at the unit, and the landlord had them removed and he stored them in his garage. He is still in possession of those items, and according to the invoice from his company, he is charging \$200.00 a month in storage fees for a total claim of \$600.00.

Analysis

18. 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

19. I find that the landlord's claim for compensation for damages does not succeed.
20. Regarding the lock, although I accept the landlord's claim that the tenant had not returned the keys to him after he vacated, it is expected that a landlord would change the locks at a rental unit, anyway, for the safety and security of any new tenants he is putting in place.
21. I also find that the landlord is not entitled to the costs of storing the tenant's abandoned items. Firstly, section 32 of the *Residential Tenancies Act, 2018* states that a landlord only has to store a tenant's belongings for 1 month. And in any case, this section of the *Act* also outlines the manner in which a landlord can recover the storage costs he incurred. He can collect those costs from the tenant when he retrieves his belongings, and if the tenant does not retrieve them, he can recover the storage costs by selling the items, after receiving permission from the Director.
22. With respect to the remaining items, the landlord submitted no evidence to corroborate his claim that any cleaning was required at the unit, or that the tenant had caused any damage to the walls or the blinds. The landlord stated that there was no report of any incoming or outgoing inspection, and he submitted no photographs showing the condition of the unit before the tenant moved in or after he vacated. Without such corroborating evidence, I have to conclude that the landlord had failed to establish that any damage was caused to the unit, by this tenant, during this tenancy. As such, those claims do not succeed.

Decision

23. The landlord's claim for compensation for damages does not succeed.

Issue 2: Rent - \$650.00

Relevant Submissions

24. The landlord stated that the tenant's rent was paid and up-to-date for the period ending 31 October 2021, but he received no rent after that date.
25. The landlord stated that, although the tenant was supposed to move out on 01 November 2021, he never regained possession of the property until 09 November 2021. He also pointed out because the tenant had left behind a large amount of personal possessions, and because he had to carry out some repairs to the property, he could not rent the unit for the month of November 2021.
26. He stated that in mid-November 2021, he advertised the unit for rent, but he claimed that he was not able to put a new tenant in the unit until 01 February 2022. The landlord stated that the unit sat vacant during November 2021, December 2021, and January 2022, and he suffered a loss of rental income for those 3 months. He is seeking an order for a payment of rent in the amount of \$650.00 for November 2021.

Analysis

27. I accept the landlord's claim that the tenant remained at the unit until 09 November 2021, and that he had abandoned some of his personal possessions. Based on that finding, I agree that, in all likelihood, the landlord would have been unable to rent the unit during the month of November 2021. As such, the landlord's claim succeeds in the amount of \$650.00.

Decision

28. The landlord's claim for a payment of rent succeeds in the amount of \$650.00.

Issue 3: Security Deposit

29. The landlord stated that the tenant had paid a total security deposit of \$490.00, in 2 installments, on 15 January and 01 February 2021. As the landlord's claim for rent has succeeded, he shall retain that deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses

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

Summary of Decision

31. The landlord is entitled to a payment of \$180.00, determined as follows:

- a) Rent Owing \$650.00
- b) Hearing Expenses \$20.00
- c) LESS: Security Deposit..... (\$490.00)
- d) Total Owing to Landlords \$180.00

07 December 2022

Date

