

Residential Tenancies Tribunal

Application [REDACTED]
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Decision 21-0015-02

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:01 PM on 10 March 2022 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the tenant”, participated in the hearing.
3. The respondent, [REDACTED] was represented at the hearing by [REDACTED] hereinafter referred to as “the landlord”.

Issues before the Tribunal

4. The tenant is seeking an order for a refund of a \$693.75 security deposit.
5. The landlord is seeking the following:
 - An order for a payment of \$1400.00 in compensation for damages, and
 - Authorization to retain the \$693.75 security deposit.

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 case is section 14 of the *Residential Tenancies Act, 2018*.

Issue 1: Compensation for Damages - \$1400.00

Relevant Submissions

The Landlord's Position

8. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 June 2020, and a copy of that executed lease was submitted with her application (████ #1). The agreed rent was set at \$925.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$693.75.
9. The parties mutually agreed to terminate their rental agreement on 15 May 2021, and the tenant moved out on that date.
10. The landlord stated that she was required to carry out some repairs, some painting and some garbage removal after the tenant moved out, and she submitted an invoice with her application (████ #2) showing she was charged \$1400.00, by the homeowner, to have that work carried out, broken down as follows:
 - Labour..... \$450.00
 - Materials \$700.00
 - Garbage and Waste Removal..... \$250.00

 - Total..... \$1400.00

Under “Materials”, the invoice indicates that the homeowner had purchased “plaster, paint, new baseboards, caulk, door, etc.” No additional receipts were submitted besides this submitted invoice.

11. Regarding the plastering, the landlord stated that if any plastering was required, it was not because of any damage caused by the tenant, and she claimed that if any damage had been caused to the walls during this tenancy, it should be considered normal wear and tear.
12. The landlord stated that most of the work that was required after the tenant moved out consisted of cleaning, and she figured that she is entitled to \$300.00 in compensation for that work, which is included in the labour costs identified on the invoice. The landlord stated that all the walls were covered in grease and had to be washed down and that the doors and the mouldings were dirty. She claimed that the bathtub and toilet were left in a dirty state, and that the oven had not been cleaned out. She also stated that all the floors, cupboards and baseboards also had to be cleaned.
13. In support of her claim, the landlord pointed to photographs she had taken on 15 May 2021, the day the tenant vacated (████ ##3-7).

14. The landlord also stated that the tenant had installed a woodstove in the shed and in the process of doing so, had removed a window. When the tenant moved out, the landlord was required to have a new pane of glass installed. She figured that that pane comprised about \$50.00 of the \$700.00 she was charged for materials.
15. The landlord also pointed to one of her photographs showing that a damaged baseboard was leaning against one of the walls at the property after she regained possession of the unit. She is seeking \$20.00 for the costs of replacing that baseboard.
16. She also stated that the glass in the porch door was broken. That door could not be repaired and has since been replaced. The landlord did not know how old that door was and she did not provide any testimony concerning the costs it took to replace it.
17. The landlord also stated that she discovered a stain, or maybe a burn mark, on one of the carpeted treads on the stairs. The homeowner removed that section of carpet and replaced it with some extra carpet that he already had on hand. She testified that that carpet was brand new when the tenant moved in and she is seeking \$150.00 in compensation.
18. The landlord also stated that, in addition to the \$1400.00 she was charged for the work just listed, she was also charged an additional \$150.00 to have garbage removed from the grounds of the rented premises. She stated that there were car parts left outside, plastic bottles, a plastic chair, a tool case, and other items of rubbish. No photographs were submitted showing that garbage and the landlord did not submit a receipt for this additional charge.

The Tenant's Position

19. The tenant acknowledged that some minor cleaning was required, but she challenged the landlord's claim that she would have been required to spend \$300.00 to have that work carried out. She also argued that the landlord's submitted photographs do not correspond to her description of the cleaning that was required. She stated that these photographs only show that there was 1 ball of fur on the floors in 1 corner, and they do not show that the area behind the stove needed cleaning or that the cupboards needed to be cleaned out.
20. She acknowledged that the toilet and tub needed cleaning, but she figured it would only take 20 minutes to complete that work. Overall, she argued that the landlord would only be entitled to between \$50.00 and \$100.00 in compensation for cleaning.
21. Regarding the window in the shed, the tenant stated that there never was a window there, but rather just a piece of board nailed onto the wall covering the

area where a window ought to have been. She also denied that she had caused any damage to the baseboard and she claimed that there was no area in the house that was missing a baseboard and she pointed out that the landlord provided no photographic evidence showing that any baseboards were missing. The tenant also denied that she had caused the damage to the glass in the porch door and she claimed that that door was already damaged when she moved in.

22. With respect to the carpet, the tenant did acknowledged that something had been spilled on that tread during her tenancy, but she argued that the landlord's claim here was excessive, given that the landlord already had some carpet on hand and given that only the carpet on 1 tread was replaced.
23. Regarding the garbage, the tenant stated that no garbage had been left on the grounds of the property after she had moved out and she claimed that the landlord had already sent workers to the property while she was living there to clean up the grounds. The only garbage left at the unit were some garbage bags left in the garbage box for the next weekly collection.

Analysis

24. 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

25. Regarding the cleaning, the tenant acknowledged that some cleaning was required, and based on the evidence showing the condition of the property after the tenant moved out, I find that she is entitled to compensation for 8 hours of the homeowner's personal labour to carry out that work. Policy with this Section is that an applicant may charge \$20.75 per hour in compensation for their labour, so her claim succeeds in the amount of \$166.00. No evidence was presented by the landlord showing that there was any garbage left behind on the grounds of the property, nor any receipt showing that she was charged \$150.00, and as that part of the landlord's claim was disputed by the tenant, I find that she is not entitled to an award.
26. With respect to the remaining items, I find that the landlord's claim does not succeed. There is nothing on the homeowner's invoice indicating that he was seeking compensation for the costs of purchasing a new window for the shed or any carpet, and I cannot determine how the landlord arrived at the costs she indicated at the hearing. I also find that there was insufficient evidence presented at the hearing to establish that there was any missing baseboard at the property or to establish that the glass in the porch door was damaged during this tenancy.

Decision

27. The landlord's claim for compensation for damages succeeds in the amount of \$166.00.

Issue 2: Security Deposit - \$693.75

28. It is acknowledged in the submitted rental agreement that that tenant had paid a security deposit of \$693.75 on 27 April 2020. As the landlord's claim for compensation for damages has partly succeeded, she shall retain \$166.00 of the deposit and return the remainder to the tenant.

Summary of Decision

29. The tenant is entitled to the following:

- a) Refund of Security Deposit\$693.75
- b) LESS: Compensation for Damages (\$166.00)
- c) Total Owing to Tenants\$527.75

21 March 2022

Date

