

Residential Tenancies Tribunal

Application: [REDACTED]

Decision 21-0064-01

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:17AM on 12 May 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “landlord1”, participated in the hearing.
3. The applicant’s daughter, [REDACTED], hereinafter referred to as “landlord2” participated in the hearing to support her mother.
4. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate in the hearing.
5. An affidavit of service was provided by the landlord confirming that the tenant was served of the claim against her (L#1). Service occurred in the court house parking lot because landlord2 had been monitoring the public court docket so as to anticipate when and where to locate and serve the tenant.
6. Details of this claim were presented as subsequent to a previous decision [REDACTED] issued by this Tribunal to grant vacant possession of the rental premises (L#4). The tenant was subsequently removed by the office of the High Sheriff on 8 November 2021.
7. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. The standard of proof, in these proceedings, is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

8. The landlord is seeking the following:
 - An order for rent paid in the amount of \$1,700;
 - An order for compensation paid for damages in the amount of \$1,354.54;
 - An order for payment of other in the amount of \$462.70

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
10. Also relevant and considered in this case is section 10 and 19 of the *Act*, policy 9-003 Claims for Damage to Rental Premises, policy 9-005 Life Expectancy of Property, policy 12-001 Recovery of Fees and Costs and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

11. 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*.
12. 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.
13. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issue 1: Rent Paid (\$1,700)

Relevant Submissions

14. Landlord2 testified that she previously lived in the rental premises owned by her mother, landlord1. Because of this, landlord2 was actively involved in securing the tenant as a tenant and maintained up to date information throughout the tenancy as a result of her regularly visiting her mother on the top floor of the rental premises located at [REDACTED]

15. Landlord2 reviewed the rental ledger provided (L#3). As per this ledger, rent was previously set at \$750.00 a month and paid in full for the months of January 2021 through August 2021. However no rent is shown as having been paid for the months of September or October 2021. Furthermore, no rent is shown as having been received for November 2021 despite the tenant residing in the rental premises until 8 November 2021.

Analysis

16. I accept the evidence and testimony provided by landlord2 that the tenant did not pay her rent as required throughout the duration of her tenancy. As indicated in the testimony and rental ledger provided, rent was not paid for the months of September and October 2021.
17. Consistent with testimony provided by the landlord, I find that the arrears stood at **\$1,500** at 31 October 2021 ($\$750.00 \times 2 = \$1,500.00$).
18. I further calculate **\$197.28** to be owing by the tenant for rent from 1 November 2021 until 8 November 2021, the day that the tenant was removed by the High Sheriff. This amount was arrived at through the following calculations: **$\$750.00 \times 12 = \$9,000/365 = \$24.66$ AND $\$24.66 \times 8 = \197.28** .

Decision

19. The landlord's claim for rent succeeds in the amount of **\$1,697.28** ($\$1,500.00 + \197.28)

Issue 2: Compensation paid for damages (\$1,354.54).

Relevant Submissions

20. Landlord2 submitted into evidence a sales order from [REDACTED] in the amount of \$1,354.54 (L#4). She testified that the products identified on the sales order were required to repair damage caused by the tenant to kitchen cabinets within the rental premises. Due to the nature of the damage caused, multiple sections of the cabinetry needed to be replaced and these are the items identified in the sales order provided.
21. Landlord2 further testified that the quoted items have not yet been purchased because landlord1 does not have the money on hand to do so and requires that her claim for compensation to first be paid.
22. Landlord2 provided 5 pictures that illustrate thick gouges to multiple portions of the cabinets and also provided a zoomed out picture of the damage in context. Landlord2 emphasized that the question of cabinet damage was a contributing driver of the original application for vacant possession mentioned above. Specifically, the tenant was said to have been belligerently drunk one night and

tipped over a section of cabinets that is on wheels causing supper, knives and other items to fall across the kitchen.

23. The kitchen cabinets were said to have been newly installed in April 2018.

Analysis

24. Claims for damages are considered in accordance with policy 9-003 Claims for damage to rental premises. The responsibility to prove the claim and to value each item in any claim lies with the applicant (the landlord in this case). 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).
25. As noted above, damage to the cabinet was included in the reasons cited by the adjudicator of the previous claim for vacant possession provided by this Tribunal. As such, I find it highly probable that the tenant was indeed the cause of the reported damage to the cabinets. A review of the photos provided suggest that significant force would have been required by the tenant to tip that particular cabinet over. I believe it was possible.
26. Prior to awarding any costs for compensation for damage, I must also take into account the depreciable value of the current kitchen cabinets (purchased in spring 2018). According to policy 9-005 Life expectancy of property, kitchen cabinets have a serviceable life of 20 years and landlord1 is seeking to replace the damaged section after only 4 years of service.
27. As such, I find that landlord1 is entitled to compensation in 80% of the claimed value for the costs of replacing the required kitchen cabinets because there are 16 serviceable years remaining out of 20 possible years. I calculate this to be worth \$1,083.63 ($1,354.54 \times 80\% = \$1,083.63$).

Decision

28. Landlord1's claim for compensation for damages succeeds in the amount of \$1,083.63.

Issue 3: Payment of Other (\$462.70)

Relevant submissions

29. Landlord2 provided copy of receipts that total to the amount of \$462.70 being claimed for payment of other, these included (L#5):
- 7 hours of cleaning on 15 November 2021 (Cleaner 1)

- 7 hours of cleaning on 15 November 2021 (Cleaner 2)
 - 4 hours of cleaning on 30 November 2021 (Cleaner 1)
 - Witness subpoena \$100.00
30. Landlord2 testified that the 18 hours of cleaning was required because the tenant had been removed from the rental premise on 8 November 2021 and did not clean. Landlord2 testified that the unit “wasn’t overly dirty” there just was not anything done to it because the tenant had not been expecting to leave.
31. The hourly wage for cleaning was identified as \$20.15 an hour.
32. Landlord2 testified that the claim for compensation for the costs of the witness subpoena related to the witness that was required to testify during their original appearance before this Tribunal.

Analysis

33. According to policy 12-001 Recovery of fees and costs, there is an allowable sum of \$100.00 that can be claimed for each day that a witness testifies “as an expert witness or in the matter pertaining to his or her professional, trade or calling.” A review of the previous decision issued by this tribunal to landlord1 (L#6), confirms that the witness was asked to provide testimony on areas of his profession. As such, the claim for \$100.00 for the witness subpoena succeeds as requested.
34. Regarding the claims for cost of cleaning, landlord2 did not provide pictures and did not provide evidence of any move in or move out inspection reports. Landlord2 did however emphasize that cleaning was required because the tenant was not intending to leave the rental premises and had to be physically removed by the sheriff. Such a situation meant that no cleaning had been conducted by the tenant prior to her departure.
35. Landlord1 claimed \$362.70 for costs of cleaning – 18 hours of work at \$20.15. As per policy 9-005 depreciation and life expectancy of property, allowable hourly costs for cleaning are \$21.20 (\$8 + minimum wage \$13.20).
36. Considering the testimony and evidence provided by the landlord, as well as the analysis provided by the adjudicator, responsible for the vacant possession order (see paragraph 28 in L#6) :

“that the landlord’s quiet and peaceful enjoyment is disturbed by all the comings and goings at the tenant’s unit and by her intoxicated behaviour.”

I find that the claim for costs for cleaning as put forward by landlord1 to be reasonable. As such, her claim for costs succeeds as presented.

Decision

37. Landlord1’s claim for payment of Other succeeds in the amount of \$462.70.

Summary of Decision

38. The landlord is entitled to the following:

- A payment of \$3,243.61, determined as follows:

a) Rent Owing.....	\$1,697.28
b) Compensation.....	\$1,083.63
c) Other.....	\$462.70
d) Total.....	<u>\$ 3,243.61</u>

20 May 2022
Date

