

Residential Tenancies Tribunal

Decision 20-0166-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:04 am on 22 September 2020 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”, did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$317.30,
 - An order for a payment of rent in the amount of \$800.86,
 - An order for a payment of late fees in the amount of \$75.00, and
 - Authorization to retain the security deposit of \$325.00.

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 is section 15 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 her 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 a 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. The landlord submitted an affidavit with her application stating that the tenant was served with notice of the hearing, via text-message and Facebook Messenger, on 24 July 2020. Copies of those messages were submitted with the landlord's application. The tenant has had 59 days to provide a response. 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 her absence.

Issue 1: Compensation for Damages - \$317.30

Relevant Submissions

7. The landlord stated that she had entered into a monthly rental agreement with the tenant on 01 December 2016. The rent of \$650.00 was paid on a semi-monthly basis, and the landlord stated that tenant had paid a security deposit of \$325.00.
8. In early 2020, the tenant fell into rental arrears and the landlord elected to terminate their agreement. Accordingly, on 09 February 2020 the landlord issued the tenant a termination notice and a copy of that notice was submitted with her application. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 19 February 2020. The tenant vacated on that date.
9. The landlord stated that after the tenant moved out she was required to carry out some cleaning at the unit and she also had to repair the front door.
10. Regarding the front door, the landlord claimed that the police were called to the tenant's apartment sometime in February 2020 as a result of a complaint from the upstairs' tenant. The landlord stated that she was informed that the police had to break down the door when they arrived at the unit as the tenant was unconscious. That door was not repaired by the tenant before she vacated and the landlord stated that she incurred the costs of repairing the door frame and installing a new lock. The landlord pointed to her submitted receipts showing that she had spent \$95.30 at Kent for a door closer and a new lock set, and a second receipt shows that she was charged \$80.50 (\$70.00 + tax) for the costs of repairing the screen door.
11. The landlord also stated that she was required to carry out extensive cleaning at the unit as well and she is seeking compensation for 4.5 hours of her labour, which she calculates to be \$87.30 (4.5 hours x \$19.40 per hour). The landlord complained that she was required to clean all of the kitchen appliances, and she stated that it took her over an hour just to clean the oven. She also stated that she had to wash down all the walls, as there were streaks of liquid on them and food particles, and she complained that all of the windows were dirty. The

landlord pointed to her submitted photographs, which show the condition of the unit after she had moved, to support her claim. She also stated that there was a foul odour of cat urine in the apartment that was very difficult to remove and she had to resort to replacing some flooring in the apartment.

12. The landlord also complained that when she went to the unit after the tenant had vacated to carry out some repairs and to repaint, she noticed that she was getting bites on her arms and legs from what she later discovered to be fleas. She stated that she had no issues with fleas prior to the tenant moving in and she figured that they had made their way into the unit via the tenant's animals. The landlord stated that she had to have the tenant's unit, and the upstairs apartment, sprayed for fleas by a professional pest control company and she submitted a receipt showing that she was charged \$402.50. The landlord is seeking reimbursement for half of that amount.

Analysis

13. I accept the landlord's testimony and evidence in this matter and I find that she is entitled to the costs she is seeking here.
14. Her evidence shows that the front door to the apartment was damaged when the tenant vacated and I find that the \$175.80 that she had paid for the materials for the repairs to be fair compensation. Her photographs also show that no cleaning had been carried out before the tenant moved out and I also accept the landlord's testimony that there was a smell of animal urine in the property. \$87.30 is more than fair for the amount of cleaning that would have been required.
15. Given that there had not been any issues with fleas at the unit prior to the tenant moving in, I also find it probable that she was responsible for that infestation. As such, the landlord's claim for the pesticide treatment succeeds in the amount of \$201.25 ($\$402.50 \times \frac{1}{2}$).

Decision

16. The landlord's claim for compensation for damages succeeds in the amount of \$464.35 ($\$175.80 + \$87.30 + \201.25).

Issue 2: Rent - \$800.86

Relevant Submissions

17. The landlord testified that the tenant had only paid \$275.00 in rent for the month of January 2020, leaving her with a balance owing of \$375.00. She also stated that no payments were made for February 2020.

18. The landlord is seeking an order for a payment of the remaining \$375.00 owing for January 2020 and she calculates that the tenant owes her \$425.86 for the period from 01 February to 19 February 2020.

Analysis

19. I accept the landlord's claim in this matter and I find that the tenant had not paid rent as required for January and February 2020. As the landlord is only seeking rent to 19 February 2020, I find that she is entitled to an award for \$800.86 (\$375.00 + 425.86).

Decision

20. The landlord's claim for a payment of rent succeeds in the amount of \$800.86.

Issue 3: Late Fees - \$75.00

Relevant Submission

21. The landlord has assessed late fees in the amount of \$75.00.

Analysis

22. Section 15.(1) of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

23. The minister has set the following fees:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

24. As the tenant has been in rental arrears since 02 January 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

25. The landlord’s claim for late fees succeeds in the amount of \$75.00.

Issue 4: Security Deposit

Relevant Submissions

26. The landlord stated that the tenant had paid a security deposit of \$325.00 on 18 November 2016. As the landlord’s claim has been successful, she shall retain that security deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses:

Relevant Submissions

27. The landlord submitted a hearing expense claim form and a receipt showing that she had paid a fee of \$20.00 to file this application. As the landlord’s claim has been successful, the tenant shall pay this hearing expense.


Summary of Decision

28. The landlord is entitled to the following:

a) Compensation for Damages.....	\$464.35
b) Rent.....	\$800.86
c) Late Fees	\$75.00
d) Hearing Expenses	\$20.00
e) LESS: Security Deposit	(\$325.00)
f) Total Owing to Landlord	<u>\$1035.21</u>

30 November 2020

Date


John R. Cook
Residential Tenancies Tribunal