

Residential Tenancies Tribunal

Decision 20-0187-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:05 pm on 07 January 2021 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “tenant” participated in the hearing. The respondent, [REDACTED], was represented at the hearing by [REDACTED] hereinafter referred to as “the landlord”.

Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$2025.00.
4. The landlord is seeking the following:
 - An order for a payment in compensation for inconvenience;
 - An order for a payment of \$1062.06 in compensation for damages;
 - An order for a payment of \$644.00 in cleaning costs; and
 - Authorization to retain the security deposit.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is section 14 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

7. The tenant amended her application at the hearing and stated that she was now only seeking a return of \$525.00 of the security deposit as the landlord had already returned to her \$1500.00.

Issue 1: Rent Owing - \$1062.06

Issue 2: Cleaning - \$644.00

Relevant Submissions

The Landlord's Position

8. The landlord and tenant entered into a 1-year, fixed-term lease, commencing 10 September 2018, and a copy of that executed agreement was submitted with the landlord's application. The agreed rent was set at \$2700.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$2025.00.
9. That lease was extended for an additional 5 months, and the tenant vacated the unit on 30 January 2020 when that renewed lease expired.
10. When the tenancy began, the landlord and the tenant conducted a walkthrough of the property and the landlord submitted a copy of a condition report that was filled out at that time. The report indicates that there are no major deficiencies with the property except for scuffs and marks on the walls and floors in each room.
11. The landlord stated that a walkthrough was conducted when the tenancy ended, on 30 January 2020, but no report was filled out. According to the landlord, it was noted that there was some damage caused to a ceiling in the unit and he received assurances from the tenant that that damage was to be repaired on 31 January 2020. He claimed that that work was not carried out. In addition to costs he incurred to repair the ceiling, through this application, the landlord is also seeking the costs of cleaning and garbage removal. He submitted the following breakdown of the costs he is seeking:

- Ceiling Repairs \$967.34
- Garbage Removal..... \$40.00
- Paint Order \$54.72
- Professional Cleaning \$299.00
- Carpet Cleaning \$345.00

- Total \$1436.06

Ceiling Repairs

12. The landlord pointed to his submitted photographs showing that 2 ceilings at the property had suffered water damage. He testified that these photographs were taken on 30 January 2020. After the tenant moved out, he hired a contractor to carry out the repairs to these ceilings and he submitted a copy of his invoice showing that he was charged \$967.34 to have that work carried out. The landlord pointed out that the contractor had indicated on the invoice that when he inspected the affected areas he could find no evidence of a leaking pipe and he determined that the damage could only have happened as a result of a sink, toilet or bathtub overflowing.

Garbage removal

13. The landlord pointed to a photograph showing that there were several bags of garbage and recycling left in the garage after the tenant moved out. He hired his contractor to remove that garbage and his submitted invoice shows that he was charged \$40.00.

Paint Order

14. The landlord submitted another invoice, dated 23 May 2020, for the costs of purchasing primer, caulking and brown paint. He stated that these items were used to repair some walls his contractor had cut out when he was inspecting the pipes for leaks.

Professional Cleaning

15. The landlord also claimed that the unit had to be professionally cleaned after the tenant moved out and he submitted an invoice, dated 18 June 2020, showing that he was charged \$299.00 to have that cleaning carried out. The landlord testified that the tenant had not cleaned the area behind the stove, that the stove and refrigerator were dirty, and that the bathrooms needed cleaning. No photographs were submitted to corroborate those claims, but he did point to an e-mail in which another employee of his property management company stated, in March 2020, that the area behind the stove had not been cleaned.
16. The landlord also pointed to 4 photographs showing the concrete floor in the garage and he pointed out that there were tire tracks on that floor as well as some mud.

Carpet Cleaning

17. The landlord also stated that the carpets were soiled and dirty and had not been cleaned before the tenant moved out. No photographs were submitted at the hearing. He submitted a receipt, dated 07 July 2020, showing that he was charged \$345.00 to have the carpets at the unit professionally cleaned.

The Tenant's Position

Ceiling Repairs

18. The tenant acknowledged that one ceiling had suffered some water damage in January 2020, though she denied that it was caused by an overflow. She suspected that the damage may have been caused by a leaking pipe or possibly happened as a result of snow entering the house during "snowmageddon". In any case, the tenant testified that she had hired her own contractor to repair that ceiling and that work was carried out on 31 January 2020, the day after the walkthrough. No invoice was submitted by the tenant.
19. Regarding the second ceiling identified by the landlord, the tenant stated that it was not damaged during her tenancy and no damage was noted there on 30 January 2020. She also pointed out that the landlord's invoice was dated 25 April 2020, almost 3 months after she had moved out, and she argued that the water damage to these 2 ceilings could have occurred at any time during that period.

Garbage Removal

20. The tenant acknowledged that she had left behind some garbage bags in the garage. She stated that because of "snowmageddon" the weekly municipal garbage collection was cancelled and she had no way to dispose of that garbage. She did not dispute the landlord's \$40.00 charge.

Paint Order

21. The tenant complained that this order for paint was made in May 2020, 4 months after she had moved out and a month after the contractor had repaired the ceilings. She suggested that this order was not made to correct any damage she had caused at the unit but was rather used to prepare the unit for the landlord's new tenants who moved in over the summer.

Professional Cleaning

22. The tenant stated that the whole unit was professionally cleaned before she had moved out and she denied the landlord's claim that the stove, refrigerator or bathrooms were dirty. She also pointed out that the landlord did not have the unit cleaned until June 2020, 5 months after she had moved out, and she argued that she cannot be held responsible for any accumulation of dirt that had occurred in that intervening period.
23. She acknowledged that she had not cleaned the area behind the stove, but she questioned whether this was necessary and she claimed that she had not been instructed to clean that area by the landlord. Regarding the garage floor, the

tenant pointed out that she moved out of the unit in January 2020 and that there was a lot of snow on the ground at that time and she acknowledged that some mud had transferred to that floor. She argued, though, that it was “absurd” to require a tenant to clean a garage floor.

Carpet Cleaning

24. The tenant again complained about the gap in time between the date she moved out and the date the landlord had the carpets cleaned. She argued that she cannot be held responsible for any soiling of the carpets which had occurred during that period. She also testified that during the outgoing walkthrough, there was no indication that the landlord was not satisfied with the state of the carpets.

Analysis

25. 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

26. With respect to the water damaged ceilings, I find that the landlord has presented insufficient evidence to establish that that damage was caused during this tenancy or that that damage was caused by a deliberate or negligent act on the part of the tenant.
27. There was no report of an outgoing inspection, and according to the tenant's testimony, she had one ceiling repaired on 31 January 2020, the last day of her tenancy. Her submitted e-mail correspondence with the landlord also shows that she had been promised, on several occasions after she had moved out, that her security deposit would be returned to her and it was only in March 2020 that the issue of the water-damaged ceiling was raised by the landlord. That timeline leaves open the likely possibility that there is defect at the rental unit and that the damage occurred after the tenant vacated.
28. In any case, if I am wrong about that, and if the damage did occur during this tenancy, I find that the landlord has not established that that damage was caused deliberately or by any negligent act of the tenant. It was her testimony that there was no overflow at the unit and that the appearance of the water stain coincided with that major snowstorm on 17 January 2020. Of course, the invoice submitted by the landlord indicates that water damage was not caused by a leak, but again, given that that assessment was made in late April 2020, I am not convinced the contractor could conclude that the damage had occurred back in January 2020 while the tenant was residing at the property—why not February or March 2020? As such, the landlord's claim for the costs of repairing the ceiling and the costs of ordering paint does not succeed.
29. Regarding the garbage removal, as the tenant did not contest this portion of the landlord's claim, I find that the landlord is entitled to the \$40.00 he is seeking here.
30. I was not persuaded that the landlord is entitled to the costs of hiring a professional cleaner. No photographs were submitted showing that the area behind the stove was dirty, that the kitchen appliances needed cleaning or that the bathrooms were dirty. I also agree with the tenant that as the unit was not cleaned until 5 months after she had moved out, the landlord has not established that any cleaning needed in June 2020 was caused during her tenancy, which

ended in January 2020. With respect to the garage floors, I also agree with the tenant that these floors were used in a normal way and that the tracks seen in the landlord's photographs should be regarded as normal wear and tear.

- 31. Regarding the carpets, no evidence was presented by the landlord to establish that they were soiled or that they were soiled during this tenancy.

Decision

- 32. The landlord's claim for compensation for damages succeeds in the amount of \$40.00 for the costs of removing garbage.


Issue 2: Security Deposit

- 33. The tenant paid a security deposit of \$2025.00 on 05 August 2018 and receipt of that deposit is acknowledged in the submitted lease.
- 34. On 13 March 2020, the landlord returned to the tenant \$1500.00 of that deposit and he is currently holding the remaining \$525.00. The landlord and the tenant both acknowledged at the hearing that they had not entered into any written agreement on that remaining \$525.00.
- 35. As the landlord's claim for garbage removal has been successful, the remainder of the security deposit shall be disposed of as follows:

- a) Refund of Remaining Security Deposit \$525.00
- b) LESS: Garbage Removal..... (\$40.00)
- c) Total Owing to Tenant..... \$485.00

12 April 2021

Date



John R. Cook
Residential Tenancies Tribunal