

Residential Tenancies Tribunal

Decision 20-0191-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:11 am on 07 January 2021 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 inconvenience in the amount of \$3600.00,
 - An order for a payment of rent in the amount of \$2700.00, and
 - An order for compensation for damages in the amount of \$14,069.86.

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 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, by e-mail, on 26 November 2020 and a copy of that e-mail was submitted with her application. The tenant has had 41 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 - \$14,069.86

Relevant Submissions

7. The landlord stated that she had entered into a monthly rental agreement with the tenant commencing 01 August 2019 and a copy of that executed agreement was submitted with her application. The agreed rent was set at \$1200.00 per month and it is acknowledged in the agreement that the tenant had paid a security deposit of \$600.00.
8. The tenant was living at the unit with [REDACTED] and in March 2020 she was informed that the tenant had moved out and that [REDACTED] was residing there alone. With the assistance of the police, [REDACTED] was removed from the unit and the landlord was able to regain possession of her property on 07 May 2020.
9. The landlord stated that significant damages had been caused to the rental property during this tenancy and she submitted the following breakdown of the costs to carry out the repairs:
 - Initial repairs \$2655.97
 - Owner's clean up and paint \$953.28
 - Flooring material \$3574.20
 - Install floor and paint..... \$6326.41
 - Cleaning \$560.00
 - Total.....\$14,069.86

Initial Repairs

10. The landlord testified that she had hired her handyman, [REDACTED], to carry out some initial repairs at the unit before she replaced the floor and had the unit repainted. She pointed to a receipt she had submitted showing that she was charged \$2655.97 by [REDACTED]—\$1300.00 of that amount was for labour and \$1355.97 was for the costs of purchasing materials.
11. According to that receipt, [REDACTED] had to supply and install a new front door and fix the trim-work around that door, and he also had to supply and install 3 bedroom doors and install door knobs. In support of her claim that these doors needed replacing, the landlord submitted photographs with her application showing that

these doors had been severely damaged and were broken up. The landlord surmised that they had been kicked in. She testified that these doors were in the property when she purchased it in 2011.

12. The landlord also complained that there wasn't a room in the rental unit that didn't have holes or dents in the walls, and she submitted further photographs showing the various large holes in some of the walls. She also complained that the trim-work around the fireplace had to be repaired. ■■■ repaired the trim-work and he plastered all of the holes throughout the unit. The landlord stated that the unit was last painted in 2015
13. ■■■ also replaced the light fixtures in the living room and 2 bedrooms as they were also damaged and he replaced a cupboard door in the kitchen which had been ripped off. She submitted photographs showing those damages items as well as the receipts for their replacement. The landlord stated that these cupboards were new when the tenant moved in.

Owner's Clean Up and Paint

14. The landlord also complained that there was a significant amount of personal belongings left at the unit as well as debris, junk and garbage. To corroborate her claim, the landlord pointed to her submitted photographs showing what had been left behind in various rooms in the rented unit. The landlord stated that it took her 11 hours to remove all of the junk and garbage from the unit and put it in a dumpster she had rented. She submitted a receipt from Dump Commander Inc. showing that she was charged \$175.00 to rent the dumpster and another receipt showing that she was charged \$93.96 in tipping fees.
15. The landlord also testified that after the walls were repaired and plastered, and before she made the decision to hire professional painters to paint the house, she started that project herself and she completed 2 upstairs rooms. She is seeking compensation for 9 hours of her personal labour.
16. The landlord also complained that the tenant had broken the control piece to the furnace and she submitted a receipt showing that she was charged \$184.00 (\$160.00 + tax) to have it replaced. She also submitted a receipt showing that she had purchased 2 light fixtures at a cost of \$163.28. The landlord testified that the light in the living room and a light in the downstairs part of the house were damaged by the tenant and required replacing and she pointed to her photographs showing that damage.

Flooring and Painting

17. The landlord also stated that she was required to replace the carpets in the bedrooms, on the stairway and in the hall. She stated that these carpets were heavily stained after the tenant moved out and she stated that she was concerned that they may have been infested with insects. The landlord stated that she put new carpet on the stairs, and she laid laminate flooring in the

bedrooms and in the hallway. She submitted a receipt showing that she paid \$3574.20 for these new floors and she hired Real Renos Plus Inc. to install them. Real Renos were also hired to repaint the unit, but the receipt does not indicate how much of the \$6326.41 was charged for the floor installation. The landlord stated that these floors were already in the unit when she purchased it in 2011.

Cleaning

18. The landlord also submitted a receipt from Bear Cleaners for the costs of carrying out a deep cleaning at the unit after the contractors had finished installing the flooring and had finished repainting the unit. According to that quote, the landlord would be charged \$560.00 for 15 hours of work. As of the date of the hearing, that work has not been carried out.

Analysis

19. 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

20. Regarding the work carried out by ■■■, I accept the landlord's testimony and evidence concerning that matter and I agree with her that she had to have several doors replaced, that the holes in the walls needed plastering, that the light fixtures needed replacing and the cupboard door had to be repaired. Although her submitted receipt does show that she was charged \$2655.97, due to the depreciation in value of some of these items, I cannot award the landlord the full amount she is claiming here. For example, interior doors have an expected lifespan of 20 years, and as these doors were at the unit since at least 2011, the landlord is only entitled to approximately 55% of the costs she incurred to replace them. The invoice submitted by ■■■ does not itemize the charges for each item he repaired, and I therefore cannot be exact, but I find that \$2200.00 is fair, factoring in the depreciated value of some of these items.
21. With respect to the work the landlord had carried out at the property, I find that she is entitled to some of the costs she is seeking here. Her evidence does show that there was a significant amount of garbage and debris left behind and I therefore find that she is entitled to the costs she had incurred to rent a dumpster and have the garbage disposed of. I also accept her claim that she had spent 11 hours collecting and removing that garbage. Accordingly, I find that she is entitled to the \$466.96 she is claiming here (\$198.00 for her labour + \$175.00 + \$93.96). I also accept her claim that she was required replace the furnace control knob and the 2 lights, and find that she is entitled to her receipted expenses of \$347.28 (\$184.00 + 163.28).
22. Regarding the painting, though, I find that the landlord is not entitled to those costs. A paintjob has an expected lifespan of between 3 and 5 years and as this unit was last painted in 2015, I find the landlord would probably have to soon repaint the unit anyhow. I have also come to the same conclusion with respect to the costs of replacing the carpet. Those carpets were already at the unit in 2011, and as a medium grade carpets has an expected lifespan of 8 years, they too were probably due to be replaced.
23. I was also not persuaded that the landlord is entitled to the full costs of cleaning the unit. The floors have been replaced, all the walls and ceilings are repainted and all garbage and debris have been removed from the unit. With all that work completed, the amount of cleaning will now be minimal, and the landlord presented little evidence at the hearing to establish that it would take 15 hours to

carry out that work. I find that an award for 5 hours of cleaning is fair and I award the landlord \$100.75 (5 hours x \$20.15 per hour).

Decision

24. The landlord’s claim for compensation for damages succeeds in the amount of \$3114.99 determined as follows:

- Initial Repairs \$2200.00
- Owner’s Clean Up and Paint..... \$814.24
- Cleaning \$100.75

- Total..... \$3114.99

Issue 2: Rent - \$2700.00

Issue 3: Compensation for Inconvenience - \$3600.00

Relevant Submissions

25. The landlord stated that she had received no rent from the tenant for the months of January and February 2020 and she is seeking a payment of \$2400.00 for those 2 months (2 months x \$1200.00 per month). She also testified that over the course of October, November and December 2019 the tenant had accumulated rental arrears totalling \$300.00, bring the total claim for rent to \$2700.00.

26. Although the tenant had moved out of the unit at the end of February 2020, ■ continued to reside there during March, April and May 2020 and she received no rent from either the tenant or ■ during that 3 month period. In addition to the rent for January and February 2020, she is also seeking rent for those 3 months.

Analysis

27. I accept the landlord’s testimony in this matter and I find that she had received no rent between January and May 2020, a period of 5 months. I also accept her claim that the tenant also owed \$300.00 for 2019. As such, the landlord’s claim succeeds.

Decision

28. The landlord’s claim for a payment of rent succeeds in the amount \$6300.00.

Issue 4: Security Deposit

29. The landlords stated that the tenant had paid a security deposit of \$600.00 on 01 August 2019 and receipt of that deposit is acknowledged in the submitted rental

agreement. As the landlords' claim has been successful, she shall retain that deposit as outlined in this decision and attached order.


Summary of Decision

30. The landlord is entitled to the following:

- a) Compensation for Damages..... \$3114.99
- b) Rent..... \$6300.00
- c) LESS: Security Deposit (\$600.00)
- d) Total Owing to Landlord \$8814.99

30 March 2021

Date



John R. Cook
Residential Tenancies Tribunal