

Residential Tenancies Tribunal

Decision 20-0250-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 am on 31 August 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the landlord”, also participated.

Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$600.00.
4. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$800.00, 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.

Issue 1: Compensation for Damages - \$800.00

Relevant Submissions

The Landlord's Position

7. The landlord stated that he had entered into a rental agreement with the tenant in November 2018. The agreed rent was set at \$1100.00 per month, though the landlord stated that he had reduced that rent to \$1000.00 for the first several months of the tenancy. He also testified that the tenant had paid a security deposit of \$800.00 at the beginning of November 2018.
8. The tenancy ended on 20 May 2020 and the tenant vacated on that date.
9. The landlord testified that he was required to carry out some repairs both during this tenancy and after the tenant moved out and he submitted the following breakdown of he costs that he had incurred:
 - Garbage Removal..... \$150.00
 - Toilet Repair \$120.00
 - Paint, Plaster, and Repair Damages..... \$530.00
 - Total \$800.00

Garbage Removal

10. The landlord stated that the tenant had placed a chesterfield and mattress in the yard of the rented premises during the winter of 2020. He testified that these items were an eyesore and he instructed the tenant to have them removed. He stated that he had told her that if she did not have them removed, he would do it for her and charge her \$150.00 for his time.
11. He stated that the tenant did not comply with his request and he therefore went to her property, removed the items and disposed of them at the dump. The landlord is seeking \$150.00 in compensation for his labour to dispose of these items.
12. He testified that the he was charged \$18.00 to dispose of these items at the dump and he claimed that it took 3 hours to collect the mattresses and chesterfield and to drive them to the dump.

Toilet Repair

13. The landlord stated that one day during this tenancy he received a call from the tenant informing him that the toilet had was backed up. He stated that he visited the unit, inspected the toilet and discovered that there was a conch shell causing the back up.

14. The landlord argued the costs of repairing the toilet was the responsibility of the tenant since she had caused the back up. He stated that it took him 2 hours to fix the toilet and he is seeking \$120.00 in compensation for his labour.

Paint, Plaster, and Repair Damages

15. The landlord stated that there had been a fire in bathroom in the rental unit, caused by a candle igniting nail polish remover. That fire caused damages to the vinyl floor in the bathroom and to the cupboard doors on the vanity.
16. The landlord stated that, in an attempt to repair these damages, the tenant had placed cheap, sticky tiles down on the floor, which he complained was an inadequate repair job. He is seeking the costs of replacing that floor. That work has not yet been carried out and no quotes were submitted at the hearing. He also stated that he had to paint the cupboard doors with a stain blocker, which had cost him \$70.00. He then had to repaint these door with a latex paint. No bill for the stain blocker was submitted prior to the hearing, but after the hearing the landlord did submit a copy of a receipt, dated 03 September 2020, for \$29.31 for the costs of purchasing primer.
17. Furthermore, the landlord stated that he was required to repaint the bathroom as tenant had painted over the switch plates, plugs and the towel racks. He is also seeking the costs of repainting the whole apartment. He complained that before the tenant vacated she had plastered various nicks and nail holes on all the walls throughout the unit, but she did not sand or paint before she turned the unit over to him. He stated that he had to sand down all of the plaster and the walls, and they then had to be primed and the walls had to be repainted.
18. The landlord stated that he paid \$257.00 for paint and he testified that it took him 32 hours to complete the painting.

The Tenant's Position

Garbage Removal

19. The tenant acknowledged that she had placed a couch and mattresses in the yard and she testified that she had intentions to dispose of them before she vacated.
20. She pointed out, though, that because of the COVID-19 pandemic, the [REDACTED] was not conducting bulk garbage collection and she was unable to take the items to the dump.
21. The tenant further argued that she had full intentions of removing these items from the property, along with any other garbage, when she vacated. She submitted copies of text-messages in which she informs the landlord that she will have these items removed when she vacates. She claimed, though, that a week

before she was set to leave, the landlord arrived at her property and took the couch and mattress. She claimed that the landlord had no right to come onto her property during her tenancy and remove these items.

Toilet Repair

22. The tenant stated that she had been having issues with the toilet ever since she had moved into the unit. She did not contest the landlord's claim that he had found a shell in the toilet, but she testified that she had not put anything in the toilet and suggested it may have been there from a previous tenancy.
23. She also argued that it is a landlord's responsibility to deal with maintenance issues at rental properties and that was why she had called him in the first place when she first discovered the problem with the toilet. She stated that had she known the landlord was going to charge her for his time to visit the unit, she would have called someone else to do the work.

Paint, Plaster, and Repair Damages

24. The tenant acknowledged that she was responsible for the fire in the bathroom. She also claimed that she had repaired the floors that she had damaged by putting down sticky tiles, as the landlord had stated. She testified that she could not afford a more expensive floor.
25. Regarding the vanity cupboards, the tenant stated that she had full intentions of repairing those herself and she claimed that the landlord was initially willing to allow her to sand down the cupboards and repaint them. She argued, though, that before she had a chance to repair them, the landlord had removed them from her property.
26. And with respect to the painting, the tenant also acknowledged that she had plastered and sanded those areas of the walls that she had damaged. She also acknowledged that she had not repainted the unit and claimed that it already needed to be painted when she first moved in.

Analysis

27. 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 wilful 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

28. With respect to the couch and the mattresses that the tenant had put in the yard, I agree with the landlord that these items must have been an eyesore. However, I agree with the tenant that this did not give the landlord permission to go onto the property and remove those items himself before the tenancy ended. While the tenancy was ongoing, if the landlord wished to have the yard cleaned, he ought to have issued the tenant a written notice to have any garbage removed and if she did not comply with that written notice, he could have issued her a termination notice. No evidence was presented at the hearing to indicate that such a notice was issued. And according to the tenant's text-message evidence, she informed him that she would have these items removed before she vacated and no evidence was presented to show that the landlord had permission to dispose of the tenant's possessions. For these reasons, this portion of the landlord's claim does not succeed.

29. I was also not persuaded that the landlord is entitled to the costs of repairing the toilet. The tenant denied that she had done anything to cause the toilet to

become backed up, and besides his testimony, the landlord had presented no other evidence at the hearing to establish that the tenant had put a shell in the toilet. I also agree with the tenant that in cases where there are maintenance concerns which were not caused by any deliberate or negligent act of the tenant, the costs of addressing those concerns should be covered by the landlord.

30. Regarding the bathroom, there is no dispute that the tenant had caused damage to the floor and the vanity doors in that room. I also accept his claim that there were numerous patches of plaster on the walls which required sanding and that these wall then needed to be repainted. On examination of the video he had submitted, I also note that there are numerous marks on the walls from what looks like crayon or pencil. I therefore find that the landlord is entitled to the \$530.00 he is claiming on this portion of his application.

Decision

31. The landlord's claim for compensation for damages succeeds in the amount of \$530.00.

Issue 2: Security Deposit

32. The landlord stated that the tenant had paid a security deposit of \$800.00, in 2 installments, on 27 October and 01 November 2018. As the landlord's claim has been partly successful, the deposit shall be disposed of as follows:

- a) Refund Security Deposit\$800.00
- b) LESS: Compensation for Damages (\$530.00)
- c) Total Owing to Tenant.....\$270.00

04 November 2020

Date


John R. Cook
Residential Tenancies Tribunal