

Residential Tenancies Tribunal

Decision 20-0423-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:04 am on 07 December 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondents, [REDACTED] and [REDACTED], did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a return of possessions valued at \$91.98,
 - An order for a payment of rent in the amount of \$1075.00,
 - An order for a payment of late fees in the amount of \$19.00, and
 - An order for compensation for damages in the amount of \$4763.37.

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 are sections 15, 18 and 19 of the *Residential Tenancies Act, 2018*, rule 29 of the *Rules of the Supreme Court, 1986* and policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them 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 the respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlord submitted affidavits with their application stating that she had served the tenants, by e-mail, on 16 November and 23 November 2020 and she also submitted copies of other e-mail exchanges she had had with the tenants using those addresses. The tenants have had 13 days to provide a response. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.

7. The landlord amended her application at the hearing and removed her claim for an order for missing possessions. She also amended her claim for compensation for damages and stated that she now only wanted the Board to address 3 of the 14 items on her submitted breakdown. The amended total for damages comes to \$4048.50

Issue 1: Compensation for Damages - \$4048.50

Relevant Submissions

8. The landlord stated that she had entered into a monthly rental agreement with the tenants on 01 December 2012. The agreed rent was set at \$1075.00 per month and the landlord stated that the tenants had paid a security deposit of \$525.00 before they took possession of the property.
9. In August 2020 the tenants informed the landlord that they would be terminating their agreement and they vacated on 27 August 2020.
10. The landlord stated that the tenants had caused significant damage to the unit during their tenancy and she submitted the following breakdown of the costs to carry out repairs:
 - Plaster and paint..... \$3047.50
 - Replace French door \$351.00
 - Replace carpet on stairs \$650.00

 - Total..... \$4048.50

Plaster and Paint

11. The landlord stated that the rental unit was last painted in 2012, prior to the tenants moving in, but she claimed that the tenants had also carried out some painting, on several occasions, during their tenancy.
12. With her application the landlord had submitted numerous photographs showing the conditions of each of the rooms in the rental unit after the tenants had moved

out. She pointed out that there were numerous dents and gouges in almost all the walls and that some trim-work and windows sill had been scratched up, presumably by the tenants' pets. She also complained that some walls and ceilings had been marked up and that many of the walls were dirty.

13. The landlord stated that the whole unit had to be painted after the tenants vacated and she submitted an invoice from Clean Cuts Painting showing that she was charged \$3392.50 (\$2950.00 + tax) to have that work completed. She stated that that invoice included the costs of painting the front door and the kitchen cabinets, for which the tenants are not responsible. The landlord stated that she is seeking an award of \$2650.00 + tax for the damage that they had caused.

French Door

14. The landlord pointed to her photographs which show that a pane of glass is missing from a French door. She stated that she had instructed the tenants to repair that door before the tenancy ended, but they failed to do so. The landlord replaced that door after the tenants moved out and she submitted an order summary from The Home Depot showing that a replacement door cost \$163.30. She stated that that door was at least 10 years old and that all the glass panes were in place when the tenancy began.

Carpet on Stairs

15. The landlord stated that the carpet on the stairs was brand new when the tenants moved in in 2012 and she complained that it had to be replaced after they vacated. She pointed to her photographs which show that the carpet was frayed and cut in places and that there were several places where it had become unravelled, leaving large loops hanging off the treads. She also pointed out that the carpet was stained in several places. With her application the landlord had submitted an invoice showing that she had replaced that carpet at a cost of \$557.75.

Analysis

16. 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

17. With respect to the painting, I accept the landlord's claim that there were various holes and dents in the walls throughout the unit and I also accept her claim that she was required to repaint the whole apartment. However, I find that the landlord is not entitled to the full amount she is claiming here. Landlords are expected to repaint a rent unit every 3 to 5 years as a result of normal wear and tear and as this unit was last painted in 2012, it was due for a new paintjob anyhow. Some of the damage identified by the landlord does exceed normal wear, though, and I find that she is entitled to some compensation for the extra work that was required to carry out those repairs. I find that \$500.00 is a fair award.
18. I also accept the landlord's claim that the tenant had damaged the French door and her evidence does show that there is a pane of glass missing from that door. Interior doors have an expected lifespan of 20 years, and given that this door was approximately 10 years old, I find that she is entitled to a depreciated award of \$81.65 ($\$163.30 \div 20 \text{ years} \times 10 \text{ years remaining in lifespan}$).
19. The landlord's evidence also shows that the carpet on the stairs was damaged and stained and I agree with her that it needed replacing. Again, though,

depreciation must be taken into account. As a good grade carpet has an expected lifespan of 10 years, I find that the landlord is entitled to a depreciated award of \$111.55 ($\$557.75 \div 10 \text{ years} \times 2 \text{ years remaining in lifespan}$).

Decision

20. The landlords' claim for compensation for damages succeeds in the amount of \$693.20 determined as follows:

- Plaster and paint..... \$500.00
- Replace French door \$81.65
- Replace carpet on stairs \$111.55

- Total..... \$693.20

Issue 2: Rent - \$1075.00

Relevant Submissions

21. The landlord stated that although she knew in early August 2020 that the tenants were going to moving out, it was not until 23 August that they were able to give her a definitive date. She testified that she had informed the tenants that because she had not been given enough notice, she would require that they pay their rent for September 2020. She testified, however, that they paid no rent for that month.
22. The landlord stated that because of the damage which had been caused to the unit, she was required to spend a couple of weeks painting, cleaning and carrying out the required repairs. Nevertheless, she stated that he had placed advertisements on Facebook Marketplace and on Kijiji immediately after 23 August 2020, when the tenants had given her their move-out date. She testified that she secured a new tenant for October 2020.
23. The landlord stated that because the unit sat vacant for the month of September 2020 she suffered a loss of rental income for that month and she is seeking an order for a payment of \$1075.00 in compensation for that loss.

Analysis

24. Section 18.(1)(b) of the *Residential Tenancies Act, 2018* states that tenants must give landlords at least 1 full month's notice that they are terminating their rental agreement.
25. I accept the landlord's claim that it was only on 23 August 2020 that she received a definitive indication that the tenants would not be residing at the unit in September 2020. Given that that she only had a week to advertise for September 2020 and given that the landlord had to repair some damages that

the tenants had caused to the unit, I agree with her that, despite her efforts, she could not have found new renters for September 2020.

26. Accordingly, I find that the tenants are responsible for compensating the landlord for the loss of rental income she had suffered for September 2020—\$1075.00.

Decision

27. The landlord's claim for a payment of rent succeeds in the amount of \$1075.00.

Issue 3: Late Fees - \$19.00

Relevant Submissions

28. The landlord has assessed late fees in the amount of \$19.00.

Analysis

29. 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.*

30. 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.

31. As the tenants have been in rental arrears since 02 September 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 4: Security Deposit

33. The landlord stated that the tenants had paid a security deposit of \$525.00 prior to taking possession on 01 December 2012. As the landlords' claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses

34. The landlord submitted a receipt showing that she had paid \$35.00 to have her affidavit of service notarized by commissioner for oaths. As the landlord's claim has been successful, the tenants shall pay this hearing expenses.

Summary of Decision

35. The landlord is entitled to the following:

- a) Compensation for Damages..... \$693.20
- b) Rent..... \$1075.00
- c) Late Fees \$75.00
- d) Hearing Expenses \$35.00

- e) **LESS: Security Deposit** **(\$525.00)**

- f) Total Owing to Landlord **\$1353.20**

17 March 2021

Date



John R. Cook
Residential Tenancies Tribunal