

Residential Tenancies Tribunal

Decision 20-0542-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:02 am on 10 March 2021 via teleconference.
2. The applicant and landlord, [REDACTED], was represented at the hearing by [REDACTED] (“[REDACTED]”) and [REDACTED] (“[REDACTED]”). 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 a payment of \$659.00 in compensation for damages, and
 - An order for a payment of \$20.00 in hearing expenses.

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 she served the tenant with notice of the hearing, by e-mail, on 09 December 2020 and a copy of that e-mail was submitted with her application. The tenant has had 99 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 - \$659.00

Relevant Submissions

7. ■ stated that she had entered into a monthly rental agreement with the tenant on 16 December 2011 and a copy of the most recent lease renewal was submitted with the landlord's application (■ #1). The tenant moved out of the unit on 06 November 2020.
8. ■ complained that the unit had not been adequately cleaned before the tenant vacated and she stated that she was required to carry out some repairs after the tenant moved out, as well. She submitted the following breakdown of the costs she had incurred cleaning and repairing the property (■ #2):
- Pre-clean apartment \$210.00
 - Dispose of contents \$100.00
 - Replace 2 doors..... \$180.00
 - Replace 4 lightshades \$56.00
 - Prime walls \$113.00

 - Total..... \$659.00

Pre-clean Apartment

9. ■ stated that there was a strong pet odour in the apartment after the tenant moved out he claimed that this was caused by the fact that the tenant did not have the heat turned on at the property and that she had left a litter tray in one of the rooms. He also stated that all the floors had to be cleaned and that the appliances were left dirty. In support of his claim, the landlord submitted photographs with her application showing the condition of the unit after the tenant had vacated (■ #3).
10. ■ stated that he had hired a cleaning company to clean the unit and he testified that he was charged \$210.00.

Dispose of Contents

11. ■ also stated that the tenant had left behind a large number of bags of garbage that had to be collected and disposed of and he also stated that she had left

behind some personal belongings that also had to be removed from the unit and taken to the dump. These personal items included a kitty tower, a reclining chair, a fan, some clothing, an old couch and several boxes of other items. ■ stated that his maintenance staff charge tenants a flat rate of \$100.00 to remove items from a rental unit and transport them to the dump.

Replace 2 Doors

12. ■ also complained that the tenant had damaged 2 interior, colonial doors at the apartment and he suspected that that damage had been caused by the tenant striking these doors. He stated that the tenant had attempted to plaster over the damaged areas, but the repair job was inadequate and these doors had to be replaced. In support of his claim, ■ pointed to the submitted photographs showing that damage. ■ stated that his maintenance staff charges a flat rate of \$90.00 to replace and install new interior doors.

Missing Lightshades

13. ■ also claimed out that there were 4 lightshades missing from the light fixtures at the unit and again pointed to his photographs to corroborate that claim. He stated that tenants are charged \$14.00 by his staff for each lightshade.

Prime Walls

14. ■ stated that the unit was last painted before the tenant moved in, and he testified that she was instructed at that time that she needed the permission of the landlord if she wished to do any painting of walls at the unit. ■ stated that the tenant had painted one of the rooms a dark red during her tenancy and she had not sought the permission of the landlord to carry out that work. Although that room would have been repainted after the tenant moved out, ■ complained that it also had to be primed in order cover over the red paint. He is seeking \$113.00 for the costs of priming that room.

Analysis

15. 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

16. I accept the testimony of ■■■ and ■■■ in this matter and the landlord's evidence does show that the 2 interior doors were damaged and that there were lightshades missing from the unit. The evidence also shows that the unit had not been adequately cleaned and that garbage and other items had been left behind by the tenant.
17. Regarding the painting, I accept the landlord's claim that the tenant did not have her permission to paint those walls a dark colour. A paintjob only has an expected lifespan of 5 years, and given that the unit was last painted in 2011, the landlord would have had to repaint these walls anyhow after the tenant moved out. However, given that the landlord also had to prime these walls, in addition to painting, which she would not have had to do had they been left the same colour, I find that the tenant is responsible for the costs of the priming.
18. No receipts were submitted for the costs of carrying out these repairs, but I accept ■■■'s and ■■■'s claim that the costs they are seeking here are the flat rates charged by their maintenance staff. I also find that those costs are more than reasonable and they come in on the lower end of what would typically be awarded for similar damages. As such, the landlord's claim succeeds.

Decision

19. The landlord’s claim for compensation for damages succeeds in the amount of \$659.00.

Issue 2: Hearing Expenses

20. As the landlord’s claim has succeeded, the tenant shall pay her hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

21. The landlord is entitled to the following:

- a) Compensation for Damages..... \$659.00
- b) Hearing Expenses \$20.00

- c) Total Owing to Landlords..... \$679.00

10 June 2021

Date



John R. Cook
Residential Tenancies Tribunal