

Residential Tenancies Tribunal

Decision 20-0579-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:05 pm on 10 March 2021 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. His spouse, [REDACTED] (“[REDACTED]”), also participated.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for a payment of \$1070.00 in compensation for inconvenience,
 - An order for a payment of \$752.00 in compensation for damages, and
 - An order for a payment of rent in the amount of \$2505.00.

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 decision is section 32 of the *Residential Tenancies Act, 2018*, policy 9-3: Claims for Damage to Rental Premises and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

7. The tenant was not present or represented at the hearing and I was unable to reach him by telephone from the hearing room. 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 respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he has been properly served. The landlord submitted an affidavit with his application stating that he had served the tenant with notice of the hearing, by text-message, on 26 February 2021, and a copy of that text-message was also submitted with his application. The tenant has had 11 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 his absence.

Issue 1: Rent - \$2505.00

Relevant Submissions

8. The landlord stated that he had entered into a monthly rental agreement with the tenant on 01 March 2020. The tenant was also residing with his girlfriend, ■■■, at the time, but they ended their relationship shortly afterwards and she vacated the unit on 13 May 2020. The landlord stated that, with the consent of all the parties, the tenant stayed on as the sole leaseholder after that date.
9. The agreed rent was set at \$750.00 and the landlord stated that no security deposit was paid.
10. The landlord stated that the tenant abandoned the unit in January 2021 and he regained possession of the property on 10 January 2021.
11. With his application, the landlord submitted a copy of his rent records (■■■ #1) showing the payments he had received from the tenant since he had moved into the unit. These records show that the tenant's rent was paid and up-to-date for the period ending 30 September 2020. Since then, the landlord has only received 2 payments from the tenant: \$375.00 on 02 October 2020 and \$120.00 on 27 November 2020.
12. The landlord is seeking an order for a payment of the remaining \$255.00 owing for October 2020 (\$750.00 less \$495.00 (\$375.00 + \$120.00)) and \$2250.00 for the months of November 2020, December 2020 and January 2021.

Analysis

13. I accept the landlord's testimony and evidence in this matter and I accept his claim that the tenant has not paid his rent as required.
14. The landlord's rent records show that the tenant is in arrears in the amount of \$2505.00 for the period ending 31 January 2021 and I therefore find that his claim succeeds in that amount.

Decision

15. The landlord's claim for a payment of rent succeeds in the amount of \$2505.00.

Issue 2: Compensation for Damages - \$752.00

Relevant Submissions

16. The landlord stated that the tenant had caused some damages to the property during his tenancy and he submitted the following breakdown of the costs to repair those damages:

- Replace bedroom door \$94.29
- Replace flooring \$211.20
- Paint/prime walls..... \$206.73
- Labour \$240.00

- Total..... \$752.22

17. The landlord stated that after he regained possession of the property he discovered there was a hole in the colonial door in the bedroom. He stated that that door cannot be repaired and it needs to be replaced. That work has not yet been carried out but he claimed that it would cost \$94.29 to purchase a replacement. No estimates or quotes were submitted with his application.

18. The landlord also complained that there was a bad smell of cat urine and feces in the porch, laundry room and bathroom and he claimed that he now has to replace the flooring in those areas. That work has not yet been carried out, but the landlord stated that it would cost \$211.20 for new flooring for those areas. No quotes or estimates were submitted with his application.

19. The landlord also stated that there was significant damage caused to the walls in the bathroom and that that room now needs to be repainted. He stated that wet towels had been left on the floor in that room as well as tissues covered in fecal matter, and he claimed that this had caused mold to develop on the walls in that room. He also complained that the tenant had improperly plastered a wall in the kitchen and new drywall now needs to be installed in that room. The landlord is seeking \$206.73 for the costs of purchasing drywall, plaster and paint. No receipts or estimates were submitted with the application.

20. The landlord estimated that it would take him 12 hours to carry out these repairs and he is seeking \$240.00 in compensation for his personal labour.

Analysis

21. 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

22. I accept the landlord's claim that the tenant had caused damaged to a door, some floors and to the walls at the rental property. I also accept his claim that he will incur costs to have those items repaired or replaced. However, no receipts or estimates were presented with the application which would allow me to make

a determination of the costs of purchasing the materials to make those repairs. Hence, the claim for the costs of those materials does not succeed.

23. I do accept the landlord's claim that it would take at least 12 hours to carry out that work and I find that he is therefore entitled to the \$240.00 he is claiming in compensation for his personal labour.

Decision

24. The landlord's claim for compensation for damages succeeds in the amount of \$240.00.

Issue 3: Compensation for Inconvenience - \$1070.00

Relevant Submissions

25. The landlord stated that he had to collect and remove 9 bags of garbage from back deck after the tenant moved out and he complained that the apartment also needed cleaning. He stated that there was a mess of kitty litter found in the unit and there was also numerous bottles and other garbage found inside the apartment which had to be removed.
26. He also stated that the tenant had left behind a large amount of his personal belongings, including a chair and a couch, a coffee table and end tables, as well as clothing and footwear. The landlord stated that he is still holding those items at the unit and the tenant has made no effort to collect them.
27. The landlord is seeking \$320.00 in compensation for the costs of removing the garbage from the property and for the costs of removing and disposing of the tenant's abandoned items.
28. The landlord also stated that because the tenant abandoned the unit and had not given him any notice that he was vacating, and because of the damage he had caused, which he is still in the process of repairing, he was not able to put new tenants into the unit during February 2021. Besides the rent that was claimed in section 1, above, the landlord is also seeking a payment of \$750.00 in compensation for the loss of rental income he suffered during February 2021.

Analysis

29. I accept the landlord's claim that the unit had not been properly cleaned after the tenant moved out and that there was garbage left behind both inside and outside of the unit. I find that the landlord is entitled to compensation for 8 hours of his personal labour to clean and remove garbage. Policy with this Section is that a landlord may claim up to \$20.15 per hour for their personal labour and I therefore find that he is entitled to an award of \$161.20.

30. Regarding the tenant's abandoned personal items, I find that the landlord cannot be awarded the costs for disposing those items. Section 32 of the *Residential Tenancies Act, 2018* states that a landlord may not dispose of a tenant's abandoned property unless he has the written permission of the tenant or the Director of Residential Tenancies.
31. I agree with the landlord, though, that as the tenant had not provided him with notice that he was vacating, and because of the damage caused to the unit, I find that it would have been very unlikely that he could have secured new tenants for the month of February 2021. His claim for compensation for the loss of rent he suffered during that month therefore succeeds.

Decision

32. The landlord's claim for compensation for inconvenience succeeds in the amount of \$911.20 (\$161.20 + \$750.00).


Summary of Decision

33. The landlords are entitled to the following:

a) Rent Owing.....	\$2505.00
b) Compensation for Damages.....	\$240.00
c) Compensation for Inconvenience	\$911.20
d) Total Owing to Landlord	<u>\$3656.20</u>

15 June 2021

Date



John R. Cook
Residential Tenancies Tribunal