

## Residential Tenancies Tribunal

Application [REDACTED]  
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Decision 21-0297-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:05 PM on 29 September 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, participated in the hearing.
3. The respondents, [REDACTED] hereinafter referred to as “tennat1” and “tenant2”, respectively, also participated.

### Issues before the Tribunal

4. The landlord is seeking the following:
  - A determination of the validity of a termination notice that the landlord had issued to the tenants on 02 July 2021;
  - An order for vacant possession of the rented premises; and
  - An order for a payment of \$230.00 in compensation for damages.
5. The tenants are seeking the following:
  - A determination of the validity of the same termination notice that the landlord issued to them on 02 July 2021; and
  - An order for a payment of “other” expenses in the amount of \$15,175.28.

### Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision is policy 9-3: Claims for Damage to Rental Premises.

## Preliminary Matters

8. As the tenants vacated the unit on 16 July 2021, the landlord and tenants both amended their applications and removed their claims for a determination of the validity of the termination notice issued on 02 July 2021. The landlord also removed her claim for an order for vacant possession of the rented premises.
9. The landlord was not properly served with the tenants' application, but she waived her right to the 10-day notice requirement and requested that the hearing proceed as scheduled.

## Issue 1: Compensation for Damages - \$230.00

### Relevant Submissions

#### The Landlord's Position

10. Tenant2 moved into the rental unit in 2018, and on 15 September 2020, when tenant1 moved in, a new lease was drafted, a copy of which was submitted with the tenants' application. According that that lease, the rent was set at \$1050.00 per month and it states that a security deposit of \$500.00 had been paid.
11. On 02 July 2021, the landlord issued the tenants a termination notice and a copy of that notice was submitted with the landlord's application. That notice was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy) and it had an effective termination date of 24 July 2021. The tenants vacated on 16 July 2021.
12. The landlord stated that on 24 June 2021, the tenants awoke at 5:00 AM and turned the toilet on, and she claimed that they left it running all day, which caused the well to go dry.
13. The landlord called [REDACTED] to address the issued and she submitted an invoice which states that the well was dry because of a "leakie" toilet, and that when they came back to repair it, the tenant had already fixed it. The landlord was charged \$230.00 for that service call and she is seeking an order for a payment of that same amount.

#### The Tenants' Position

14. Tenant2 acknowledged that the toilet was probably running all day, but he claimed that this was not because of anything he had done. He stated that the toilet was defective. After the landlord's plumbers had visited the unit, he claimed that he took the toilet apart and cleaned it, and the leak then stopped.
15. Tenant2 also argued that there was no way a leaking toilet would cause the well to go dry. He claimed that the issue with the well was that the breaker for the

pump was turned off, and this issue was corrected by the landlord's plumbers when they visited.

## 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 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*

17. Although I accept the landlord's claim that her well had run dry, no credible evidence was presented by her to establish that the tenants had done anything

deliberately to the toilet to cause this problem. The tenants denied that they had deliberately caused the toilet to run, and although the invoice submitted by the landlord states that the toilet was “leakie”, that is not evidence that this was caused by the tenants.

18. As the landlord has not established that the tenants are responsible for the leak in the toilet, her claim for the costs of the service call does not succeed.

## **Decision**

19. The landlord’s claim for compensation for damages does not succeed.

## **Issue 2: “Other” Expenses - \$15,175.28**

### **Relevant Submissions**

#### The Tenants’ Position

20. Tenant2 stated that in 2018, before tenant1 had moved in, he had accidentally caught the patio on fire with a cigarette and that fire burnt some of the siding on the house.
21. Because of the damage to the house, the tenant stated that the landlord called her insurance company and arrangements were made to carry out repairs. Tenant2 complained, though, that the landlord had not only repaired the siding on the side of the house where the fire was located, but she also replaced the siding on the other 3 sides of the house and she also had the eaves replaced.
22. With their application, the tenants submitted a letter from Intact Insurance, dated 06 November 2018, which states:

*As a result of our investigation, we have established that you would be responsible for the damages which are the subject of the above noted claim.*

*Pursuant to our rights under the Insurance Act of Newfoundland we ask that our subrogated action be acknowledged as follows:*

*Intact Insurance:                      \$15,175.28*

*Please forward your cheque as follows: ...*

23. Tenant2 claimed that he could have had the damage repaired for just \$200.00 and he argued that as the landlord had not given him a 5-day notice to carry out these repairs, he is not responsible for these costs.

24. The tenants have yet to pay that \$15,175.28 to this insurance company. They are seeking an order for a payment of that amount from the landlord.

#### The Landlord's Position

25. The landlord reiterated tenant2's statement that he had caused a fire at the rental unit, causing damage to the deck and the siding on the house. She also stated that when the fire department showed up, they caused additional damage as they had to assess whether there were any fires inside the walls.
26. The landlord acknowledged that only 1 side of the house was damaged, but she claimed that the whole house had to be re-sided as the colour of the siding that she had on the house was no longer available.
27. The landlord stated that the reason that tenant2 was sent the subrogation letter by her insurance company was because he was responsible for the fire and the subsequent damage. She also stated that he had informed her that he had tenant insurance, which would cover this amount.

#### **Analysis**

28. It was not disputed that tenant2 caused the fire which occurred at the rental property in 2018, and that some resulting damage was caused. It follows that tenant2 is therefore responsible for the costs of carrying out those repairs.
29. No evidence was presented by the tenants at the hearing establishing that these repairs could have been carried out for less than what was identified in that subrogation letter, or to establish that the landlord had enriched herself in having these repairs carried out. As such, the tenants' claim does not succeed.

#### **Decision**

30. The tenants' claim for "other" expenses does not succeed.

#### **Issue 3: Security Deposit**

31. Tenant2 paid a security deposit of \$500.00 when he moved into the unit in 2018, and receipt of that deposit is acknowledged in the lease that was drafted in 2020. As the landlord's claim for compensation for damages has not succeeded, she shall return the full amount of that deposit to the tenants, as outlined in this decision and attached order.

#### **Summary of Decision**

32. The landlord's claim for compensation for damages does not succeed.

33. The tenants' claim for "other" expenses does not succeed.
34. The landlord shall refund the \$500.00 security deposit to the tenants.

10 August 2022

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Date

