

## Residential Tenancies Tribunal

Application 2022 No. 143NL

Decision 22-0143-00

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:15 AM on 07 June 2022 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord".
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", was not in attendance.

### Issues before the Tribunal

4. The landlord is seeking the following:
  - An order for a payment of rent in the amount of \$4768.00, and ,
  - An order for a payment of \$2000.00 in compensation for damages.

### 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 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. 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 she has been properly served. With her application, the landlord submitted an affidavit stating that tenant had been served with the application, by e-mail, on 05 May 2022, and a copy of that e-mail was also submitted with her application. 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 - \$2000.00**

#### **Relevant Submissions**

8. The landlord stated that she had entered into a rental agreement with the tenant in November 2021, and with her application, she submitted the renewed agreement that she had entered into with the following year. According to that agreement, the rent is set at \$620.00 per month.
9. On 04 January 2022, the landlord stated that the tenant had informed her that she had moved out of the rented premises.
10. After the landlord regained possession of the unit, she stated that she was required to repaint the property, she had to remove garbage from the unit, and then it had to be cleaned.

#### **Painting and Plastering**

11. The landlord stated that the rental unit was last painted just before this tenancy began in 2019, but she complained that all the walls and the ceilings had to be repainted again after the tenant moved out. She testified that there was one large hole in one of the walls at the unit that needed to be repaired, and then plastered, and she claimed that there were various other smaller holes in the walls throughout the apartment.
12. She also testified that, although she had given the tenant permission to paint the walls during her tenancy, it was agreed that the tenant was to return them to their original colour before she vacated. The landlord complained, though, that the tenant had used very dark colours on these walls and she had even painted lettering on some walls, all of which had to be painted over. The landlord also stated that all the ceilings were stained and dirty and they all needed to be repainted as well. Np photographs were submitted with her application.
13. With her application, the landlord submitted a copy of an invoice from a contractor showing that she was charged \$5405.00 to have the unit painted, to have the floors repaired, and to have hardware repaired. Of that amount, the landlord is seeking \$1500.00 from the tenant.

### Remove Garbage

14. The landlord also complained that there was a significant amount of garbage left in the shed and in the back yard of the property. She stated that this garbage consisted of "general clutter" as well as some car tires and rims. No photographs were submitted with her application.
15. The landlord pointed to a second invoice from the same contractor showing that she was charged \$1150.00 to have that work carried out. She testified, though, that included in that price was the costs of removing the shed from the property, which is not the tenant's responsibility. She also stated that she was able to have the tires and rims removed free of charge. Accordingly, of the \$1150.00 she was charged, the landlord is seeking \$400.00 of that amount from the tenant.

### Cleaning

16. The landlord also stated that the tenant had failed to clean the apartment before she vacated and she hired someone, at a cost of \$15.00 per hour, to carry out that work and she testified that she had paid her \$200.00. The landlord is seeking \$100.00 of that amount from the tenant. No invoice or receipt was submitted with her application. She stated that the refrigerator and oven were dirty and that the bathroom had not been cleaned. No photographs were submitted with her application either.

### **Analysis**

17. 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*

18. Regarding the garbage removal and the painting, the landlord submitted no photographs with her application showing the condition of the walls and ceilings after the tenant moved out, or showing the “clutter” left in the yard. Without such evidence, it is difficult to make a determination as to the extent of the damages claimed by the landlord. Furthermore, although I accept her evidence which shows that she was indeed charged for painting and garbage removal, the invoices submitted do not distinguish the charges for painting from the charges for the floor repairs, or the charges for garbage removal from the charges for the shed demolition. With these limitations in mind, I find that an award for \$500.00 is fair.
19. Regarding the cleaning, again, no photographs were submitted to corroborate that claim, and no receipt or invoice was submitted showing the costs the landlord had incurred. As such, that claim does not succeed.

**Decision**

20. The landlord’s claim for compensation for damages succeeds in the amount of \$500.00.

## **Issue 2: Rent - \$4768.00**

### **Relevant Submissions**

21. The landlord stated that the rental unit is owned by Newfoundland Labrador Housing (NLH) and according to the submitted lease, the tenant's rent is geared to the overall household income, as per NLH's rent policy.
22. From December 2020 through to July 2021, the tenant's rent was set at \$620.00. In July 2021, the tenant married HH, and the overall household income increased, bringing the rent to \$1142.00 per month. In September 2021, the tenant received a pay raise at her place of employment, and as of 01 September 2021, the rent was increased to \$1156.00.
23. With her application, the landlord submitted rent records showing the payments she had received from the tenant since April 2021. According to these records, the tenant last had a zero-balance on 30 June 2021. The records show that the tenant did not pay the increased rent, as a result of the income changes, for either July or August 2021, and although she had paid extra rent in November 2021, she was still in rental arrears in the amount of \$1300.00 at the end of that month. Since then, no rent was paid by the tenant.
24. The landlord argued that as the tenant had not given her a 1-month notice that she was vacating, she is also responsible for rent for January and February 2022. The landlord stated that after the repairs were carried out at the property, it was ready for occupancy in mid-February 2022, and she put a new tenant in the unit at the end of that month. She testified, though, that no rent was paid for February 2022 by this new tenant.
25. The landlord calculates that the tenant owes \$4768.00 in rent for the period ending 28 February 2022.

### **Analysis**

26. I accept the testimony and evidence of the landlord in this matter and I agree with her that the tenant had not been paying her rent as required. I also accept her claim that the tenant had not properly terminated this agreement, and that she abandoned the unit on 04 January 2022, without giving the landlord a proper, 1-month notice.
27. I also accept the landlord's claim that she had to carry out some repairs to the property after the tenant vacated and the unit was not ready for occupancy until 18 February 2022, when her new tenant moved in.
28. The landlord's records show that, for the period ending 31 December 2021, the tenant was in rental arrears in the amount of \$2456.00. As the tenant had not given the landlord a proper termination notice and as the landlord was required to carry out some repairs to the property, as a result of damage caused by the

tenant, I find that she is also entitled to compensation for lost rental income for January 2022—another \$1156.00.

29. I am not awarding the landlord rent for February 2022, however. For the last half of that month, the landlord had someone else living there, and I am of the view that the tenant cannot be charged rent for that other person's use and enjoyment of the premises. The landlord also stated at the hearing that there were some repairs carried out at the property which were not the responsibility of the tenant, e.g. the demolition of the shed, and I also hold that the tenant is not responsible for any loss of rent the landlord suffered while that work was carried out.

### **Decision**

30. The landlord's claim for a payment of rent succeeds in the amount of \$3612.00 (\$2456.00 + \$1156.00).

### **Issue 3: Hearing Expenses**

31. The landlord paid a fee of \$20.00 to file this application. As her claim has been successful, the tenant shall pay this hearing expense.

### **Summary of Decision**

32. The landlord is entitled to the following:

- a) Compensation for Damages ..... \$500.00
- b) Rent Owing ..... \$3612.00
- c) Hearing Expenses ..... \$20.00
  
- d) Total Owing to Landlord ..... \$4132.00

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14 September 2022

Date

John R. Cook  
Residential Tenancies Tribunal

