

Residential Tenancies Tribunal

Application 2022 No. 1017NL
Application 2022 No. 1097NL

Decision 22-1017-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:37 AM on 30 January 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1” and “tenant2”, respectively, participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1” and “landlord2”, were also attendance.

Issues before the Tribunal

3. The tenants are seeking an order for refund of security deposit in the amount of \$1087.50.
4. The landlords are seeking the following:
 - An order for a payment of \$125.00 in compensation for inconvenience,
 - An order for a payment of \$602.63 in compensation for damages, and
 - An order for a payment of “other” expenses totalling \$1350.13.

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 case is section 14 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises

Issue 1: Compensation for Damages - \$602.63

Relevant Submissions

The Landlords' Position

7. Landlord1 stated that he had entered into a 1-year, fixed-term rental agreement with the tenants on 01 February 2022, and a copy of that executed lease was submitted with his application. The agreed monthly rent was set at \$1450.00 and landlord1 acknowledged that the tenants had paid a security deposit of \$1087.50.
8. By mutual agreement, this tenancy ended on 30 October 2022.
9. With their application, the landlords submitted a copy of a rental premises condition report, which was signed by the landlords and the tenants on 01 February 2022, when the tenants moved in, and again signed by them on 30 October 2022, when the tenants moved out. In the outgoing section of this report, the following damages were noted to have been caused during this tenancy: a thermostat is not working, some light bulbs were burnt out, there are scratches in the electric fireplace, a deep scratch on the dining room floor, the countertop is torn on the corner, the cover to the blender is missing, a bracket is loose on a table, a curtain rod was not affixed to the wall, and a bed cover is torn. It was also noted on this report that cleaning was required in several rooms: the garbage was not cleared from the garbage bin, the carpets in the entry porch are dirty, all of the kitchen appliances were dirty, and some windows, some window coverings, and several other floors were dirty.
10. The landlords addressed the majority of these issues after the tenants vacated, and they submitted the following breakdown of the costs they had incurred:

• House cleaning	\$120.00
• Repair curtain rod and wall	\$20.00
• Replace light bulbs.....	\$16.66
• Replace mattress cover	\$45.97
• Replace floor.....	\$400.00
Total	<u>\$602.63</u>

Cleaning

11. Landlord1 stated that the rental unit was not properly cleaned when the tenants vacated and he submitted a receipt showing that he had hired a cleaner at a cost of \$120.00. Landlord1 stated that this cleaner had cleaned every room in the apartment, and she also cleaned all of the kitchen appliances, as well as the washer and dryer. He also testified that she had cleaned the window curtains and blinds, and she wiped down all the countertops and other surfaces. In support of his claim, landlord2 pointed to his photographs submitted with his application.

Repair curtain and wall

12. Landlord1 also complained that the tenants had damaged a curtain rod, and when they tried to fix it, they had caused some damage to the wall. He pointed to 2 photographs showing that damage, and he submitted a receipt showing that he was charged \$20.00 to have the rod repaired.

Replace light bulbs

13. The landlords also submitted a receipt with their application showing that they had purchased 2 lightbulbs at a cost of \$16.66. Landlord1 stated that 2 ceiling lights were burnt out when the tenancy ended.

Replace mattress cover

14. Landlord1 pointed to a submitted photograph showing that one of the mattress covers provided to the tenants was torn when the tenancy ended, and a receipt was submitted with the application showing that they had paid \$45.97 for a replacement.

Replace floor

15. Landlord1 also complained that the tenants had made a large scratch in the hardwood floor, and he again pointed to his photographs showing this damage. He testified that he had given the tenants ample time to have that floor repaired, but he claimed the attempt at repairing this floor was poorly done. Landlord1 stated that since the tenants moved out he has not repaired that floor, and he claimed that he was told by a contractor that this scratch cannot be fixed, and that instead all of the hardwood flooring in that apartment needs to be replaced. With his application, the landlords submitted a screenshot of a budget-calculator from greatfloors.ca showing that it would cost \$6716.00 to replace 363 square feet of hardwood floors. Given that the tenants had only caused damage in one localized area, the landlords calculate that the tenants owe \$400.00 of that amount. Landlord1 stated that he does not know how old these floors are, and he claimed that they were already in the house when he bought it in 2015.

The Tenants' Position

Cleaning

16. Tenant1 claimed that they had cleaned the apartment before they had vacated, but she argued that the landlords just have a higher standard of cleanliness than she does. She also blamed some of the issues the landlord had complained about on a roommate she had sublet a room to.

Repair curtain and wall

17. Tenant1 acknowledged that the curtain rod had come down during their tenancy, and she stated that she had tried to repair it as best she could. She claimed, though, that the rod was not properly affixed when the tenancy began.

Replace light bulbs

18. Tenant1 argued that burnt lightbulbs should be regarded as normal wear and tear, and as such, the tenants should not have to bear these costs.

Replace mattress cover.

19. With respect to the mattress cover, tenant1 claimed that this bed had sheets on it when the incoming inspection was carried out, and at that time the mattress cover was not visible. She suggested that the rip seen in the photograph may have already been there when they moved in.

Replace floor

20. Tenant1 acknowledged that they had caused this scratch on the floor, and she claimed that they had tried to fix it as best they could. She argued, however, that they should not be held responsible for the costs of replacing those floors, as there were already numerous scratches and gouges on them when the tenants moved in.

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 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*

22. The condition report submitted by the landlords shows that the unit was not properly cleaned when the tenants vacated, that the curtain rod was broken, that some lightbulbs were burnt out, and that a mattress pad was ripped. Those deficiencies were not noted during the incoming inspection, and by signing that report, the tenants acknowledge that that damage was caused during their tenancy. The landlords submitted receipts with their application showing the costs that they had incurred to address these items, and I find that these 4 claims therefore succeed.
23. With respect to the floor, I also find that the tenants are responsible for the scratch identified in the landlords' photographs, and the tenants acknowledged at the hearing that they had caused that damage during their tenancy. However, I was not persuaded that the landlords are entitled to the costs of having that floor replaced. Firstly, replacing the whole floor to address 1 scratch seems grossly disproportionate, and in any case, no evidence was submitted by the landlords to establish that to establish, for example, that that scratch could not be repaired, which may have been significantly less costly. And I agree with the tenants that there were already some marks on these floors when they moved in—it is noted, e.g., on the condition report that there are scratches and depressions on that floor near the couch. Finally, the landlords were unable to state how old these floors were, and as it is expected that a landlord would refinish hardwood floors every 5 years anyhow, this is work that the landlords would probably have to undertake soon anyhow.

Decision

24. The landlords' claim for compensation for damages succeeds as follows:

• House cleaning	\$120.00
• Repair curtain rod and wall	\$20.00
• Replace light bulbs.....	\$16.66
• Replace mattress cover	\$45.97
Total.....	<u>\$202.63</u>

Issue 2: Compensation for Inconvenience - \$125.00

Relevant Submissions

The Landlords' Position

25. Landlord1 stated that he was required to travel to several hardware stores to purchase supplies for the required repairs for the rental unit, and he had to make several trips to that property while he was carrying out these repairs. He claimed that he had spent \$125.00 in gas while making these trips, and he is seeking compensation for inconvenience in that amount. No receipt was submitted with his application.

The Tenants' Position

26. Tenant1 stated that she does not understand how the landlords could have spent so much money on gas given that they live so close to the rental property. She also argued that this was not an expense that she had signed off on in the rental agreement.

Analysis

27. The receipts submitted by the landlords in support of their claim for compensation for damages show that they had made a trip to Walmart in Mount Pearl to purchase a mattress cover, and another trip to Shoppers Drug Mart, on Lemarchant Road in St. John's, to purchase light bulbs. Given that the rental property is located just 700m from Shoppers, and that the landlords only live 2.6km from the rental property, the amount of gas used in those trips would have been negligible. A round trip from downtown St. John's to Walmart in Mount Pearl is also less than 25km, and I have to agree with the tenants that this would not justify an award of \$125.00 for gasoline. In any case, as no receipts were submitted with the landlords' application, this portion of their claim does not succeed.

Decision

28. The landlord's claim for compensation for inconvenience does not succeed.

Issue 3: Other Expenses - \$1350.13

Relevant Submissions

The Landlords' Position

29. Landlord1 stated that after the tenants had moved out, he had discovered evidence of rodent droppings in the apartment. He stated that he had taken precautions to prevent rodents entering the property by installing electronic devices, but despite these precautions, rodents had gotten into the unit during this tenancy. Landlord2 argued that the rodents were attracted to the property because the tenants had not been putting the lid on the garbage bin and they had allowed food to rot in the kitchen.
30. Landlord1 stated that since the tenants moved out and since the property has been cleaned, there has been no evidence of any more rodents in the unit. He stated that he has to wait 90 days to determine if the unit is rodent-free, and if it is, he will not need the unit treated. However, if there is evidence of rodents in the unit within the next 2 weeks, the landlords will incur the costs of treatment and he submitted an e-mail from Terminix Canada in which they state that an inspection would cost \$178.25, and a 90-day treatment would come to \$569.25. Landlord1 stated that he anticipates that he will not incur these costs.

The Tenants' Position

31. Tenant1 argued that they were not responsible for the appearance of the rodent droppings, and she pointed out that as there were frequency devices in the unit when they moved in, the issue of rodents was a pre-existing problem. She also argued that it would be unfair to charge the tenants the cost of this treatment as it was not included in the rental agreement.

Analysis

32. The landlords have not incurred the costs of treating the unit for rodents and they do not anticipate that they will incur these costs. As such, their claim does not succeed.

Decision

33. The landlords' claim "other" expenses does not succeed.

Issue 4: Security Deposit

34. It is not disputed that the tenants had paid a total security deposit of \$1087.50 at the beginning of their tenancy. As the landlords' claim for compensation for damages has partly succeeded, that deposit shall be disposed of as follows:

a) Refund of Security Deposit \$1087.50

b) LESS: Compensation for Damages (\$202.63)

c) Total Owing to Tenants..... \$884.87

10 February 2023

Date

John R. Cook
Residential Tenancies Tribunal