

Residential Tenancies Tribunal

Decision 19-0164-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am on 29 July 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". 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 rent in the amount of \$3436.00;
 - An order for compensation for damages in the amount of \$423.91;
 - An order for a payment of cleaning costs in the amount of \$250.00; and
 - Authorization to retain the security deposit of \$787.50.

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.

Preliminary Matters

6. The tenant was not present or represented at the hearing. 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. With her application the landlord had submitted an affidavit stating that the tenant was served with notice of this hearing on 11 June 2019 and she has had 47 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: Rent - \$3430.00

Relevant Submissions

7. The landlord stated that she had entered into a 1-year, fixed-term lease with the tenant on 07 September 2017 and a copy of that executed agreement was submitted with her application (■ #1). The landlord also submitted a second agreement (■ #2) showing that the lease was renewed the following year from the period from 01 September 2018 to 31 August 2019.
8. The rent was set at \$1050.00 and it is acknowledged in the leases that the tenant had paid a security deposit of \$787.50 had been paid.
9. The landlord stated that in mid-February 2019 the tenant informed her that she could no longer afford the rent and she vacated at the end of that month.
10. The landlord testified that after the tenant moved out she immediately started advertising the unit for rent but, to the date of the hearing, it remains vacant. In support of her claim that she had been trying to secure new tenants, the landlord submitted copies of 2 advertisements she had placed on 27 February 2019 (■ #3, #4).
11. The landlord stated that the tenant paid no rent for February 2019 and the unit remained vacant during March and April 2019. She is seeking a payment of rent for those 3 months.

Analysis

12. I accept the landlord's claim that the tenant had paid no rent for February 2019 and I therefore find that the landlord is entitled to a payment of \$1050.00 as the tenant had use and enjoyment of the unit during that month.
13. I also accept the landlord's claim that she is entitled to rent for March and April 2019. As the tenant was in a fixed-term lease that was not set to expire until 31 August 2019, she could not terminate her agreement prior to that date. As she vacated on 28 February 2019, she is considered to have abandoned the premises, and the landlord is entitled to compensation for any lost rental she suffered as a result of that abandonment, so long as she mitigated her damages.

14. I accept the landlord's evidence which shows that she started advertising the unit on 27 February 2019 and I accept her claim that she has received no rental income for March and April 2019. As such, she is entitled to an additional \$2100.00 for those 2 months.

Decision

15. The landlord's claim for a payment of rent succeeds in the amount of \$3150.00

Issue 2: Damages - \$423.91

Relevant Submissions

16. The landlord stated that after the tenant moved out she discovered that the tenant had caused some damages to the unit and she submitted the following breakdown of the costs to carry out repairs:

• Sand 3 deck posts	\$60.00
• 5 sets of blinds	\$201.20
• Install door handle in bedroom	\$50.00
• 4 batteries for smoke detectors	\$19.31
• 4 lights bulbs	\$18.40
Total	<u>\$348.91</u>

Deck Posts

17. The landlord stated that the tenant's cats had scratched 3 deck posts and they had to be re-sanded to remove the scratches. The landlord stated that it took about 30 minutes to complete that work. No photographs or receipts were submitted at the hearing.

5 Sets of Blinds

18. The landlord claimed that the tenant had been smoking in the unit during her tenancy despite the fact that the lease specified that this was a non-smoking unit. She claimed that because of this smoking the whole apartment was covered in nicotine and had many of the surfaces had turned yellow. In particular, the landlord claimed that the plastic mini-blinds in the windows had all turned yellow and had to be replaced and she pointed to the photographs of those blinds found on the submitted CD-ROM. She submitted receipts at the hearing showing that she paid \$235.67 for 7 sets of replacement blinds (■ #7). She stated these blinds were 2 years old when the tenancy began.

Door Handle

19. The landlord stated that the tenant had been using her own door handle on one of the interior doors at the unit and she had taken it with her when she vacated. She did not reinstall the original handle and the landlord spent 10 minutes putting it back in place. She is seeking \$50.00 in compensation for her personal labour.

Batteries and Lightbulbs

20. The landlord stated that she had to replace 4 batteries and 4 lightbulbs. No receipts were submitted at the hearing.

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. Regarding the deck posts, I accept the landlord's claim that these were damaged by the tenant's cat and had to be sanded down. I find that the landlord is entitled to \$9.70 in compensation for 30 minutes of her personal labour (policy with this Section is that \$19.40 is the maximum rate an applicant may charge for 1 hour of her personal labour).

23. With respect to the plastic mini-blinds, the landlord's evidence shows that they were discoloured and I accept her claim that this was caused by the tenant smoking in the apartment. Plastic mini-blinds have an expected lifespan of between 5 and 7 years and I therefore find that the landlord is entitled to a depreciated award in the amount of \$101.01 ($\$235.67 \div 7 \text{ years} = \$33.67 \text{ per year} \times 3 \text{ years remaining in lifespan} = \101.01).

24. I accept the landlord's claim that it took 10 minutes to reinstall a door handle and I find that she is entitled to \$3.23 in compensation for 10 minutes of her personal labour ($\$19.40 \text{ per hour} \div 60 \text{ minutes} \times 10 \text{ minutes} = \3.23).

25. No evidence was presented showing what costs the landlord had incurred to replace batteries and lightbulbs. As such, that claim does not succeed.

Decision

26. The landlord's claim for compensation for damages succeeds as follows:

• Deck Posts	\$9.70
• Mini-blinds	\$101.01
• Reinstall door handle.....	\$3.23
• Replace lightbulbs and batteries	\$0.00
Total	<u>\$113.94</u>

Issue 3: Cleaning - \$250.00

Relevant Submissions

27. The landlord stated that the whole unit had to be cleaned after the tenant moved out and she testified that it took a whole day to clean. In particular, she stated that the floors needed to be cleaned as well as the refrigerator and stove. She also testified that she needed to clean out the cupboards.

28. In support of her claim, the landlord pointed to the photographs on the CD-ROM showing that the floors were dirty in places. The landlord is seeking compensation in the amount of \$250.00.

Analysis

29. The evidence submitted by the landlord shows that the floors were not adequately cleaned before the tenant vacated. I find that the landlord is entitled to compensation for 2 hours of her labour to have these floors cleaned.

Decision

30. The landlord's claim for the costs of cleaning succeeds in the amount of \$38.80 (\$19.40 per hour x 2 hours).

Issue 4: Security Deposit

31. The landlord stated that the tenant had paid a security deposit of \$787.50 on 02 September 2017 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and order.

Summary of Decision

32. The landlord is entitled to the following:

- Rent.....\$3150.00
- Compensation for damages\$113.94
- Cleaning\$38.80
- **LESS: Security deposit.....(\$787.50)**

Total Owing to Landlord\$2515.24

17 December 2019

Date

John R. Cook
Residential Tenancies Tribunal