

Residential Tenancies Tribunal

Decision 19-186-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 02 April 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", did not participate.
3. [REDACTED] provided sign-language interpretation for the landlord.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$230.00,
 - An order for compensation for inconvenience in the amount of \$130.00,
 - An order for compensation for cleaning costs in the amount of \$95.00,
 - An order for compensation for "other expenses" totalling \$100.00, and
 - Authorization to retain the security deposit of \$468.75.

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.

Preliminary Matters

7. The tenants were not present or represented at the hearing and I was unable to reach them 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as they have been properly served. The landlord testified that he served the tenants with notice of the hearing, by registered letter, and a copy of the associated tracking history shows that the tenants signed for the notice on 13 March 2019. The tenants had have had 19 days to provide a response. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
8. This is the second application filed by the landlord concerning this tenancy. A previous application (████████) was heard on 12 February 2019 and as a result of that hearing the landlord was granted an order for vacant possession of the rented premises. The landlord had that order enforced by the Sheriff and the tenants were evicted on 28 February 2019.

Issue 1: Compensation for Damages - \$230.00

Relevant Submissions

9. The landlord stated that he had entered into a monthly rental agreement with the tenants on 01 December 2018 and a copy of the executed agreement was submitted at the hearing (█ #1). The agreed rent was set at \$625.00 and the tenants paid a security deposit of \$468.75.
10. Because the tenants were smoking cannabis in the rental unit, in contravention of their rental agreement, the landlord terminated their agreement and the tenants were evicted on 28 February 2019.
11. The landlord stated that on 10 December 2018, just over a week after the tenants moved in, he carried out an inspection of the rental unit and noted that they had smashed out one of the windows in the rental unit. Photographs of the damaged window were submitted at the hearing (█ #5). The landlord speculated that the tenants had deliberately damaged the window in retaliation for the landlord issuing them a notice indicating that he would be inspecting the premises.
12. The landlord stated that this window was new when the tenants moved into the rental unit and he submitted a copy of a receipt showing that he had paid \$230.00 to have the window repaired.

Analysis

13. I accept the landlord's evidence which shows that a window at the rental unit was smashed shortly after the tenants had moved in. I also find it probable that this damage was either caused deliberately or through some negligent act on the part of the tenants.
14. As the window was new when the tenancy began, I find that the landlord is entitled to an award for the full costs of having that window repaired.

Decision

15. The landlord's claim for compensation for damages succeeds in the amount of \$230.00.

Issue 2: Other Expenses - \$100.00

Relevant Submissions

16. The landlord stated that on 13 January 2019 he was vacuuming in his apartment, which is located directly above the tenants' rental unit, and he could feel the tenants banging on the ceiling. After the tenants moved out, he discovered that as a result of this banging, the tenants had damaged the ceiling and he submitted a photograph at the hearing showing that damage (█ #7). The landlord also complained that there were also 3 screw holes in the ceiling which had to be repaired.
17. The landlord stated that he was required to plaster the damaged areas and then he had to repaint the whole ceiling. He is seeking an award of \$100.00 in compensation for his personal labour and the costs of purchasing the plaster and paint. No receipts were submitted at the hearing, but the landlord testified that he paid \$60.00 for a can of ceiling paint.

Analysis

18. I accept the landlord's testimony in this matter and I find it probable that the tenants had caused damage to the ceiling in the rental unit. I also accept the landlord's claim that he was required to plaster and repaint the ceiling.
19. Although no receipts were submitted at the hearing, I find that an award for \$100.00 for labour and materials to be reasonable.

Decision

20. The landlord's claim for "other expenses" succeeds in the amount of \$100.00.

Issue 3: Cleaning - \$95.00

Relevant Submissions

21. The landlord stated that after the tenants were evicted he was required to spend approximately 5 hours cleaning the rental unit. He is seeking \$95.00 in compensation for his personal labour (\$19.00 per hour x 5 hours).
22. In support of his claim, the landlord submitted photographs at the hearing showing the condition of the unit after the tenants vacated (█ ##8-11). The landlord pointed out that in the kitchen the stove, oven, refrigerator and sink had to be cleaned and the photographs show that the cupboards were not clean and that the tenants had left items behind. He also testified that he was required to clean all the floors throughout the apartment as well as the stairs and he complained that the porch and bedrooms were dirty.

Analysis

23. The photographic evidence submitted by the landlord does show that the rental unit had not been adequately cleaned before the tenants vacated and I accept the landlord's claim that it took 5 hours to carry out that work. As such, the landlord's claim succeeds.

Decision

24. The landlord's claim for compensation for cleaning succeeds in the amount of \$95.00.

Issue 4: Inconvenience - \$130.00

25. The landlord stated that the rental unit was furnished with various items when the tenants moved in and he claimed that when the tenants vacated they took several of those items with them.
26. With his application the landlord supplied the following list of missing items as well as their replacement costs (█ #4):

• Hanging lamp	\$25.00
• Bathroom hanging shelves	\$25.00
• Curtains/rods	\$35.00
• Collapsed storage boxes	\$15.00
• Swiffer Wet Jet floor spray mop.....	\$30.00
 Total.....	 \$130.00

27. In support of his claim that these items are missing, the landlord submitted photographs at the hearing (█ ##12-16) showing these items in the rental unit

before the tenants moved in alongside other photographs taken after the tenants moved out. In these latter photographs, these items are missing.

28. The landlord is seeking an order for a return of these missing items.

Analysis

29. I accept the landlord's claim that the tenant had removed the items, listed above, from the rental unit. The landlord testified at the hearing that he believes that these items are currently in the possession of the tenants. Accordingly, I order that the tenants deliver up these items to the landlord.

Decision

30. The tenants are ordered to deliver up the following items to the landlord:

- Hanging lamp
- Bathroom hanging shelves
- Curtains/rods
- Collapsed storage boxes
- Swiffer Wet Jet floor spray mop

Issue 5: Security Deposit

31. The landlord stated that the tenants had paid a security deposit of \$468.75 on 01 December 2018. As the landlord's claim has been successful, he shall retain that portion of the security deposit as outlined in this decision and order.

Issue 6: Hearing Expenses

32. The landlord submitted a receipt for \$20.00 for the costs of filing this application as well as a copy of a receipt for \$13.11 for the costs of serving the tenants with notice of this hearing by registered letter.

33. As the landlord's claim has been successful, the tenants shall pay these hearing expenses.

Summary of Decision

34. The tenants are entitled to the following:

- a) Refund of security deposit \$468.75
- b) LESS: Compensation for damages (\$230.00)
- c) LESS: Other expenses (\$100.00)

d) LESS: Cleaning (\$95.00)
e) LESS: Hearing expenses (\$33.11)

Total Owing to Tenants \$10.64

35. The tenants shall deliver up to the landlord the following items:

- Hanging lamp
- Bathroom hanging shelves
- Curtains/rods
- Collapsed storage boxes
- Swiffer Wet Jet floor spray mop

07 May 2019

Date


John R. Cook
Residential Tenancies Tribunal