

Residential Tenancies Tribunal

Decision 19-337-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:10 am on 22 May 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively, participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred "tenant1" and "tenant2", respectively, also participated.

Issues before the Tribunal

3. The landlords are seeking the following:
 - An order for compensation for damages in the amount of \$320.00, and
 - Authorization to retain \$320.00 of the \$500.00 security deposit.

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.

Issue 1: Compensation for Damages - \$320.00

Relevant Submissions

The Landlords' Position

6. The landlords and tenants entered into a 6-month, fixed-term rental agreement on 01 January 2019 and a copy of the executed lease was submitted at the hearing (█ #1). The agreed rent was set at \$750.00 and it is acknowledged in the lease that the tenants had paid a security deposit of \$500.00.
7. The landlords and tenants mutually discontinued the lease and the tenants vacated on 30 April 2019.
8. After the tenants moved out a walkthrough was conducted and 2 deficiencies were noted at that time: an exterior light was damaged and there were holes in a wall where the tenants had hung a dartboard.

Exterior Light

9. Landlord2 stated that the rental unit was newly constructed 6.5 years ago and the exterior light was installed at that time. There was no damage caused to the light when the tenants moved in.
10. Landlord2 stated that when the tenants were moving out of the unit they damaged that light and a photograph of that damaged light was submitted at the hearing.
11. The landlords have since replaced this light and they submitted receipts at the hearing showing that they paid \$34.49 for a replacement (█ #4) and they hired an electrician, at a cost of \$40.00, to install the light. They also submitted a receipt showing that they had paid \$5.59 for caulking and they are seeking \$19.00 in compensation for 1 hour of their time spent purchasing the materials.

Wall Repairs

12. Landlord2 stated that the tenants had mounted a dartboard to a wall in the rental unit and when they removed it, they left 5 screw holes in the wall. Photographs of that damage were submitted at the hearing.
13. These holes had to be plastered and sanded and the wall was then repainted. The landlords are seeking \$109.25 in compensation for 5.75 hours of their personal labour to purchase materials, plaster and paint and they also submitted receipts showing that they had purchased material for this work at a cost of \$82.77 (█ ##6-8).

The Tenants' Position

Exterior Light

14. The tenants both acknowledged that they had damaged that light when they were moving their furniture out of the house. Tenant2 stated that he had offered to replace and install a new light but that offer was eventually rebuffed.
15. Tenant1 pointed out that this light sits at the back of the house and no one is able to see it anyhow.

Wall Repairs

16. The tenants acknowledged that they had mounted a dartboard to the wall with 5 gyroc anchors. Tenant2 stated that this damage was very minor and argued that the costs the landlords are seeking here are excessive.
17. Tenant1 stated that he had offered to do this repair work himself but the landlord had also rejected that offer.

Analysis

18. 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*

19. Regarding the exterior light, there was no dispute that the tenants had damaged this light when they were moving out of the rental unit. I therefore find that they are responsible for compensating the landlords for the costs of replacing that light. Light fixtures have an expected lifespan of 15 years and as this light was 6.5 years old, I find that the landlords are entitled to an award totalling \$56.19 (\$34.49 + \$40.00 + \$5.59 + \$19.00 = \$99.08 ÷ 15 years = \$6.61 per year x 8.5 years remaining in lifespan = \$56.19).
20. With respect to the damage caused by the dartboard, I agree with the tenants that this damage is minor and that those 5 small holes could probably have been repaired at a cost much lower than what the landlords had claimed. In any case, landlords are expected to repaint the walls in a rental unit every 3 to 5 years, as a result of normal wear and tear from successive tenancies, and I therefore find that these walls would soon have had to be repainted anyhow. As such, this portion of their claim does not succeed.

Decision

21. The landlords claim for compensation for damages succeeds in the amount of \$56.19.

Issue 2: Security Deposit - \$500.00

22. The tenants paid a security deposit of \$500.00 on 07 December 2018 and receipt of that deposit is acknowledged in the submitted lease. As the landlords' claim for damages has succeeded, they shall retain \$56.19 of that deposit and return the remaining amount to the tenants.

Summary of Decision

23. The tenants are entitled to the following:

a) Refund security deposit \$500.00

b) LESS: Compensation for damages (\$56.19)

Total Owing to Tenants \$443.81

01 August 2019

Date

John R. Cook
Residential Tenancies Tribunal