

Residential Tenancies Tribunal

Decision 19-0434-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:10 am on 26 June 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing by teleconference. The respondent, [REDACTED], hereinafter referred to as "the landlord", also participated.

Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$821.25.
4. The landlord is seeking an order for compensation for damages in the amount of \$994.97 and she is seeking authorization to retain the security deposit.

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 10 of the *Residential Tenancies Act, 2018* and Policy 9-3 Claims for Damage to Rental Premises.

Preliminary Matters

7. The tenant was not served with the landlord's counterclaim 10 clear days prior to the hearing date. The tenant waived her right to proper notice and she requested that the hearing proceed as scheduled.

Issue 1: Compensation for Damages - \$994.97

Relevant Submissions

The Landlord's Position

8. The tenant moved into the rental unit on 01 September 2018 and a copy of the executed rental agreement was submitted at the hearing. The agreed rent was set at \$1095.00 and it is acknowledged in the agreement that the tenant had paid a security deposit of \$821.25.
9. The tenant moved out of the unit on 30 April 2019 with the consent of the landlord.
10. After the tenant moved out of the unit, the landlord stated that she discovered some damages that the tenant had caused and with her application she submitted the following breakdown of the costs to carry out repairs:
 - a) Cleaning \$75.00
 - b) Box Spring \$114.99
 - c) Couch \$804.98
 - d) Total \$994.97

Cleaning

11. The landlord stated that she was required to carry out 5.5 hours of cleaning after the tenant moved out and she is seeking compensation in the amount of \$75.00 for 3 of those hours.
12. The landlord stated that the unit was relatively clean but she pointed out that the tenant had 2 pet cats at the unit and she stated that she found cat fur and kitty litter throughout the unit.
13. She testified that there was fur on the blinds and on the seats of the chairs and she found litter in some drawers and underneath the vanity in the bathroom.
14. In support of her claim the landlord submitted 2 photographs (█ #1, #2) showing the area under the vanity in the bathroom and pointed out that some kitty litter is visible.

Box Spring

15. The landlord submitted photographs at the hearing showing the condition of the box spring after the tenant had moved out (█ #3-5). She pointed out that one corner of the box spring was very heavily scratched up and there was also damage caused to the underside of the box spring. The landlord contended that this damage was caused by the tenant's cats.
16. The landlord stated that this box spring was approximately 8 years of age and was in good condition.
17. The box spring is still at the rental unit but the landlord is seeking \$114.99 for the costs of replacing it. No quote or receipt was submitted at the hearing.

Couch

18. The landlord also submitted photographs at the hearing (█ #7) showing the condition of her bonded-leather couch after the tenant had moved out. These photographs show that there are scratches and punctures in the arms of the couch which the landlord stated were caused by the tenant's cats.
19. The landlord stated that the couch was 5 years old when the tenant moved in and it was in good condition.
20. The landlord stated that she has been informed that bonded-leather cannot be repaired and she was also informed that it would be cheaper to purchase a new sofa instead of having it reupholstered. She submitted an invoice at the hearing showing that she had paid \$804.99 for the couch in 2013 (█ #6). It has not yet been replaced.

The Tenant's Position

21. The tenant stated that when she met the landlord at the unit on 29 April 2019 no mention was made to her then about the cleanliness of the unit.
22. The tenant stated that she had hired professional cleaners to clean the apartment before she vacated and she submitted a copy of the exchange she had with the cleaners on Kijiji as verification (█ #2).
23. The tenant also played 3 videos at the hearing showing the condition of the unit on the day she vacated. She pointed out that these videos establish that the unit was left in a clean state and no kitty litter or cat fur is visible.

Box Spring

24. The tenant stated that the box spring was already scratched up and damaged when she moved into the rental unit and she denied that this damage was caused by her cats during this tenancy.
25. The tenant stated that on the day that she first arrived at the unit, she released her scared cats from their cages and one of them immediately went missing. She eventually found that cat inside the box spring and it had made its way there through a hole in the underside of the box spring.
26. She claimed that when she removed the cat from the box spring she noticed that the corner of the box spring was also scratched up and she testified that she found cat toys under the bed. The tenant inferred that the landlord's previous tenants must have had cats and must have caused this damage.

Couch

27. The tenant acknowledged that there was some damage caused to the couch by her cats. The tenant argued that this damage was minor and that it is hardly noticeable and she submitted her own photographs at the hearing showing the condition of the couch when she moved out.
28. The tenant argued that the couch does not need to be replaced and is still perfectly functional.
29. She also pointed out that the landlord knew that she was bringing cats into the unit and she argued that the landlord ought to have known that scratching is typical behaviour for cats and the damage caused to the couch should be chalked up to normal wear and tear.

Analysis

30. 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*

31. The videos submitted by the tenant establish that the rental unit was left in a clean state when she vacated. The only evidence submitted by the landlord in support of her claim were the photographs showing the area underneath the vanity, and although a little bit of litter can be seen in that area, I am of the view that this amount of dirt is so insignificant that it does not justify an award.
32. Regarding the scratches to the box spring, I find that the landlord has failed to establish that this damage was caused during this tenancy. The tenant claimed that the damage was there when she moved in and there is no report of an incoming inspection to refute her testimony. The landlord acknowledged that the previous tenants had cats as well and it may be the case that the damage was caused by those cats, not the tenant's.
33. With respect to the couch, I accept the landlord's evidence which shows that there are scratches and punctures in the arms of that couch and the tenant acknowledged that that damage was caused by her cats. I do not accept the tenant's claim that this damage should be regarded as normal wear and tear and she ought to have taken steps during her tenancy to have prevented her cats from causing that damage.

34. Given that the couch is made of bonded leather, a material that is not very durable, its lifespan is shorter than a couch made of leather or fabric. Some websites I have consulted state that bonded leather sofas may only last between 2 and 5 years before issues arise with peeling and cracking. Although the sofa was in good condition when the tenancy began, its anticipated lifespan must be taken into consideration when making an award. I find that the landlord is entitled to a depreciated award of \$200.00.

Decision

35. The landlord's claim for compensation for damages succeeds in the amount of \$200.00

Issue 2: Security Deposit - \$821.25

36. The tenant paid a security deposit of \$821.25 on 29 July 2018 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim for compensation for damages has been partly successful, she shall retain that portion of the security deposit and return the remainder to the tenant as outlined in this decision and order.

Issue 3: Hearing Expenses

37. As both parties claims have been partly successful, they shall pay their own hearing expenses.

Summary of Decision

38. The tenant is entitled to the following:

- a) Refund of Security Deposit.....\$821.25
- b) LESS: Damages (\$200.00)
- c) Total Owing to Tenant \$621.25

23 October 2019

Date

John R. Cook
Residential Tenancies Tribunal