

Residential Tenancies Tribunal

Decision 19-0508-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:20 am on 27 November 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", also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$1895.10;
 - An order for a payment of late fees in the amount of \$75.00;
 - An order for a payment of "other" expenses in the amount of \$1085.48; and
 - Authorization to retain the security deposit of \$1125.00.

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 Section 15 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Rent - \$1895.10

Relevant Submissions

The Landlord's Position

6. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with tenant on 01 May 2018 and a copy of the executed lease was submitted with his application (■ #1). The agreed rent was set at \$1500.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$1125.00.
7. The tenant terminated the agreement at the end of April 2019 and with the landlord's permission she was allowed to stay on at the unit for a few extra days in May 2019 in exchange for a pro-rated rent.
8. With his application, the landlord also submitted records showing the payments he had received from the tenant since she moved into the property (■ #2). These records show that no rent had been paid for April 2019 and that the tenant had not paid the agreed pro-rated rent of \$387.10 for May 2019.

The Tenant's Position

9. The tenant did not dispute the landlord's record of rent payments and she acknowledged that she owed \$1500.00 for April and \$387.10 for May 2019.
10. The tenant stated that withheld the rent from the landlord for those 2 months because she suspected that she was going to have a difficult time having him return the security deposit to her after she vacated. She claimed that without having that deposit returned promptly, she was concerned that she would not be able to come up with the rent and security deposit for the new home she was moving into.

Analysis

11. The tenant did not contest the landlord's records and she acknowledged that she owes \$1887.10 in rent. As such, the landlord's claim succeeds.

Decision

12. The landlord's claim for a payment of rent succeeds in the amount of \$1887.10.

Issue 2: Late Fees - \$75.00

Relevant Submissions

13. The landlord has assessed late fees in the amount of \$75.00.

Analysis

14. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

15. The minister has prescribed the following fees:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

- (a) *\$5.00 for the first day the rent is in arrears, and*
- (b) *\$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.*

16. The landlord's rent records show that the tenant was late paying her rent in July 2018 and the landlord assessed late fees at that time. Although the tenant continued to pay her rent since that date, those assessed fees were not paid.

17. As the tenant has been in arrears since 02 July 2018, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

18. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 3: "Other" Expenses - \$1085.48

Relevant Submissions

The Landlord's Position

Mattress Cleaning

19. The rental unit was fully furnished and the tenant was supplied with beds and mattresses. The landlord submitted 2 photographs at the hearing (■ #4, #5) showing 2 of these mattresses and he pointed out that both were stained. The landlord stated that he had spoken with the homeowners and they had informed him that these mattresses were not stained when the tenant moved in.

20. The landlord has since had these mattresses cleaned and with his application he submitted a copy of an invoice (█ #3) showing that he was charged \$224.25. The landlord figured that the mattresses were probably 5 years old.

Floor Repair

21. The landlord stated that there was a scratch in the hardwood floor that needed to be repaired after the tenant vacated and a photograph of the floor was submitted at the hearing. The landlord stated that it took 1 hour to repair that scratch and he is seeking \$63.25 in compensation. The landlord stated that the floors were 5 years of age.

Furniture Damage

22. The landlord submitted photographs showing a bedside table from the master bedroom (█ ##12-14), a bedside table in the second bedroom (█ ##7-9) and an upholstered stool. He pointed out that there were marks on the table in the master bedroom, some bubbling on the table from the second bedroom and that there were stains on the upholstered stool.

23. The landlord stated that these pieces of furniture were purchased in 2013 and he submitted a copy of an e-mail invoice with his application. According to the landlord, the invoice shows that the 2 bedside tables cost \$1044.00 and the landlord is requesting half of that amount as compensation: \$522.00.

Mattress Pads

24. The landlord also stated that the mattress pads that the tenant had been using during her tenancy were soiled and needed to be replaced. No photographs were submitted at the hearing. These mattress pads have not yet been replaced, but the landlord submitted screenshots from amamazon.ca showing that 2 mattress pads would cost \$317.38.

The Tenant's Position

Mattress Cleaning

25. Regarding the mattress shown in Exhibit █ #5, the tenant claimed that nothing was spilled on that mattress while she resided at the unit and she surmised that it was stained when she moved in. She pointed out that the landlord submitted no photographs showing the condition of the mattresses when she moved in and these mattresses were not inspected when she did the initial walkthrough of the property.

26. Regarding the mattress shown in Exhibit █ #4, the tenant acknowledged that there were a couple of minor stains on that mattress but she chalked those stains up to normal wear and tear. She argued that a landlord ought to expect some

wear on furniture that has been used by a tenant over the course of a year. She also argued that those stains could have been spot cleaned and would not require professional cleaning.

Floor Repair

27. The tenant acknowledged that there was a small, 3-inch scratch in the floor and claimed it was caused when she was moving.

Furniture Damage

28. The tenant acknowledged that some of the bubbling on the table from the second bedroom was caused during her tenancy. She stated that the top of the table is very delicate and if a glass was laid on it, it would cause the damage seen in the photographs. However, the tenant stated that she had merely used the table in a normal way and had not been negligent. She also claimed that some of that bubbling was there when she moved in.
29. The tenant acknowledged that she was responsible for the stains that can be seen on the upholstered stool.

Mattress Pads

30. The tenant stated that the mattress pads were not soiled and she claimed that she regularly washed them. She also stated that the costs the landlord is seeking are excessive and one can purchase mattress pads for \$50.00 apiece.

Analysis

31. 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;*

32. Regarding the mattresses, I agree with the tenant that the landlord had failed to establish their condition when the tenancy began. There was no report of an incoming walkthrough and the landlord's testimony about their condition in 2018 is mere hearsay. I also agree with the tenant that the few minor stains that may have been caused during this tenancy ought to be attributed to normal wear and tear. As such, the landlord's claim does not succeed.

33. With respect to the scratch on the floor, I also find that the landlord is not entitled to compensation. I am unable to discern any damage in his submitted photograph and as that damage is so imperceptible, I have to attribute it to normal wear and tear. Some minor nicks and scratches have to be expected as the result of the normal use of floors. I'll also point out that the finish on a hardwood floor only has an expected lifespan of 5 years anyhow.

34. With respect to the furniture, I accept the tenant's testimony that the tops of these tables were made with a material that was easily damaged and it was her testimony that the tables were used in a normal way. I attribute that damage, then, to normal wear and tear. With respect to the upholstered stool, the tenant acknowledges that she caused that damage and I find that the landlord is entitled to \$100.00 for the costs of having it professionally cleaned.

35. No evidence was submitted by the landlord to establish that the mattress pads were soiled or needed to be replaced. Hence, that claim fails.

Decision

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

Issue 4: Hearing Expenses

37. As the landlord's claim has been successful, the tenant shall pay his hearing expense of \$20.00 for the costs of filing this application.

Issue 5: Security Deposit

38. The landlord stated that the tenant had paid a security deposit of \$1125.00 on 20 April 2018 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, he shall retain the security deposit as outlined in this decision and order.

Summary of Decision

39. The landlord is entitled to the following:

- Rent.....\$1887.10
- Late Fees\$75.00
- "Other" Expenses\$100.00
- Hearing Expenses\$20.00
- **LESS: Security deposit.....(\$1125.00)**

Total Owing to Landlord**\$957.10**

21 April 2020

Date

John R. Cook
Residential Tenancies Tribunal

