

Residential Tenancies Tribunal

[REDACTED] Decision 19-0533-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:20 pm on 26 August 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", was represented at the hearing by [REDACTED] ("[REDACTED]") and [REDACTED] ("[REDACTED]"). A letter of authorization is on file.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for a return of missing possessions which he values at \$1500.00;
 - An order for compensation for damages in the amount of \$11,557.42;
 - An order for a payment of utilities in the amount of \$707.42;
 - An order for a payment of rent in the amount of \$1193.60;
 - An order for a payment of late fees in the amount of \$43.00; and
 - Authorization to retain the security deposit of \$1950.00.

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 tenant was not present or represented at the hearing. I was initially unable to reach the tenant by telephone from the hearing room but she did call back in about 15 minutes into the proceedings. When I identified myself and indicated why I had telephoned her, she disconnected the call.
8. 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 a respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. █ testified that the tenant was served with notice of the hearing, via registered mail, by text-message and by e-mail. The registered letter was not collected by the tenant but the tracking history shows that it was mailed on 30 July 2019. The e-mail and the text-messages were sent on 10 August 2019 and copies of the e-mail and text-message were submitted at the hearing. The cellular number and e-mail used by █ were included on the submitted rental agreement (█ #1). 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 his absence.

Issue 1: Missing Possessions - \$1500.00

Relevant Submissions

9. With his application, the landlord had submitted a rental agreement (█ #1) showing that he had entered into a 6-month, fixed-term lease with the tenant commencing 13 February 2019. The agreed rent was set at \$1850.00 per month and █ stated that the tenant had paid a security deposit of \$1950.00.
10. The tenant fell into rental arrears in May 2019 and on 07 May 2019 █ served the tenant a termination notice. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 19 May 2019. █ stated that she took possession of the premises on 20 May 2019.
11. █ stated that the property was never intended to be rented out but the landlord's realtor, █, told him that he had a tenant who was keen to rent his property and the landlord agreed to the 6-month lease. Because the tenant wanted to move in right away, the landlord did not have time to collect all of his possessions which were in the unit before the tenant moved in.
12. Although █ was not involved at the time when the tenancy commenced, █ informed her that the following items were left in the tenant's possession in February 2019 when she moved in:

- 2 pieces of quartz purchased overseas
- Skylander Giants portal for Wii
- Skylander Superchargers portal for Wii
- Skylander Trap Team portal for Wii
- A Canon camera
- Three unframed local prints of icebergs, etc. (5 x 7)

13. With respect to the pieces of quartz, as evidence that these items are missing, [REDACTED] submitted photographs ([REDACTED] #3, #8, #9) showing a table with 2 pieces of quartz on it which she stated were taken when the tenant moved in. She also submitted 3 photographs of that same table ([REDACTED] ##5-7) which she stated was taken after the tenants moved out. In these photographs, the quartz is no longer on the table. The landlord is seeking \$500.00 for the costs to replace each piece of quartz. No receipts or estimates were submitted at the hearing.

14. Regarding the remaining items, [REDACTED] submitted no additional evidence to corroborate her claim that these items were missing or in the possession of the tenant when she moved in. Regarding the costs she is seeking here, [REDACTED] stated that the landlord is seeking \$100.00 for each of the Skylander portals, \$200.00 for the camera and \$10.00 for each of the prints. No receipts or quotes were submitted at the hearing.

Analysis

15. I was not persuaded by this portion of the landlord's claim.

16. Firstly, not enough evidence was submitted at the hearing to establish that the listed items were in the tenant's possession when the tenancy began. These items are not listed on the submitted rental agreement and [REDACTED] stated that she was not present when the tenant first moved in. Her claims about what items were in the tenant's possession when she moved in were based upon statements that were told to her by the landlord and MG. That's hearsay evidence and it has to be given little weight.

17. Secondly, even if the landlord had established that the tenant had taken these listed items, no evidence was presented to show their replacement cost.

18. For these 2 reasons, the landlord's claim does not succeed.

Decision

19. The landlord's claim for compensation for missing possessions does not succeed.

Issue 2: Compensation for Damages - \$11,557.49

Repaint Unit

20. ■ stated that the tenant had been smoking in the unit and had caused there to be a strong smell of cigarette smoke throughout the house. She stated that even after cleaning the unit, she was still able to smell the cigarette smoke.
21. In support of her claim, ■ submitted 56 photographs at the hearing (■ ##11-66) showing that cigarette butts were found in various places throughout the unit and there were also cigarette ashes found on the floor, in sinks and in ashtrays. The photographs also show that the tenant had been smoking other substances besides cigarettes.
22. In order to eliminate the odour, the landlord stated that the whole unit now needs to be repainted. She pointed out that the rental unit is a 3000 square foot, 3-storey house. That work has not yet been carried out, but the landlord submitted a copy of an e-mail she had received (■ #10) in which she is quoted \$10,100.00 to have the work completed. The landlord stated that the rental unit was last painted about 7 years ago.

Incoming Cleaning

23. As part of this claim for damages, the landlord is also seeking to have returned to him \$250.00 he had given to the tenant when she first moved in. According to ■, the tenant wanted to move in immediately after she signed the lease, but she complained that the unit was not fully cleaned. The landlord and the tenant split the cost of cleaning the unit and the landlord's portion of that cost was in the form of a rent reduction of \$250.00.
24. ■ stated that after the tenant had moved out in May 2019, she deduced that the tenant had not had the unit cleaned back in February 2019 at all. She reasoned that if the tenant had had the unit cleaned back then, then various items in the house would have had to have been moved during that process. But ■ claimed that a paint can was in the exact same spot it had been before the tenancy began. As it had not been moved from its place, that area could not have been cleaned. JO also stated that the key to the detached garage was also in the same place and a TV remote control was left in the same place on a shelf.

Cleaning After Tenant Moved Out

25. ■ submitted 183 photographs at the hearing (■ ##68-250) showing the condition of the property after the tenant moved out. ■ pointed out that there was a significant amount of dog feces in the back yard and some was even discovered inside the house. She also pointed out that there was approximately 3 months of garbage left on the back deck which she had to dispose of.

26. Besides the garbage and feces that was found outside, [REDACTED] also complained that the tenant had left behind a large amount of her personal property inside the rental unit. Additionally, the tenant had not cleaned out the cupboards or the refrigerator.
27. [REDACTED] also pointed to the pictures which show that no cleaning had been done at the unit at all. The oven and stove were very dirty and there was food and debris on the countertops. The photographs of the bathroom show that the toilet was dirty and there were hair clippings in the sink.
28. [REDACTED] stated that she had spent a total of 20 hours at the unit, between 20 May and 26 May 2019, removing the garbage and feces and cleaning. She submitted an additional [REDACTED] photographs ([REDACTED] ##255-297) showing the condition of the unit after the cleaning had been completed. She also submitted a photograph of a receipt showing that she had paid \$172.08 in cleaning supplies.
29. To the date of the hearing, no other cleaning has been carried out but [REDACTED] stated that the unit still requires a deep clean. She submitted a quote at the hearing ([REDACTED] #67) which states that she will be charged \$1092.50 to clean the walls, doors and windows, baseboards, the refrigerator and stove, and a general deep clean to remove the smell of cigarette smoke.

Colonial Door

30. [REDACTED] submitted 2 photographs at the hearing showing that there was a hole in an interior colonial door at the rental unit. She suspected that the door had been punched.
31. [REDACTED] stated that the door has not yet been replaced but she submitted a screenshot from The Home Depot ([REDACTED] #298) showing that these doors cost \$57.42. [REDACTED] stated that the door was approximately 7 years old.

Travel Expenses

32. [REDACTED] pointed out that she lives a distance of 101 km away from the rental unit and she has had to make 5 return trips to the unit to deliver notices to the tenant, to conduct inspections and to carry out the cleaning. She is seeking compensation in the amount of \$0.58 per km and calculates that the tenant owes her \$585.80.

Analysis

33. 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;

34. Regarding the painting, I accept █'s claim that the tenant had been smoking in the unit and that there is now a lingering smell of cigarette smoke in the house. I also accept █'s claim that one way to address this sort of issue is to repaint. Cleaning and ozone treatments are other options. However, given that it is expected that a landlord would repaint a rental unit every 3 to 5 years anyhow, and given that the unit was last painted 7 years ago, I have to conclude that the current paintjob had outlived its lifespan and the landlord would have had to repaint anyhow, even if the tenant had not been smoking there. For that reason, the landlord's claim does not succeed. I also note, however, that in the submitted quote for cleaning (█ #67), the cleaner had indicated that the "deep cleaning" she will carry out, if hired, would address the odour issue in the house.

35. I was also not persuaded that the tenant should reimburse the landlord for the cleaning fee he had paid her. That the landlord had agreed to pay the tenant \$250.00 when she moved in does seem to indicate that the unit needed cleaning at that time. But I find [REDACTED]'s claim that the tenant had not carried out cleaning at that time needs to be supported with more evidence than just her assertion that a paint can was in the same place when the tenancy ended as it was when the tenancy began.
36. Regarding the cleaning that was required after the tenancy ended, on that point, I agree with the landlord. The evidence submitted at the hearing establishes that the tenant had left the unit in a very poor state after she had vacated. I find that the landlord is entitled to compensation in the amount of \$388.00 for 20 hours of labour (\$19.40 per hour x 20 hours) and \$172.08 for the costs of purchasing cleaning supplies. Although the after-photographs do show that the unit now appears clean, I accept [REDACTED]'s claim that some additional cleaning is required and I find that in addition to compensation for the work that has already been completed, the landlord is entitled to \$194.00 for 10 hours of additional labour.
37. The evidence submitted by the landlord does establish that there is a hole in a colonial door, and I therefore find that he is entitled to the costs of replacement. Interior doors have an expected lifespan of 20 years. Given that this door was 7 years old, I find that the landlord is entitled to compensation in the amount of \$37.32 (\$57.42 ÷ 20 years x 13 years remaining).
38. Regarding the travel expenses, though, that claim does not succeed. The costs associated with travelling to and from a rental unit to deal with tenancy related matters is a normal cost of doing business for a landlord. Furthermore, the tenant cannot be held responsible for the landlord's decision to hire a property manager who lives so far away from the rented premises.

Decision

39. The landlord is entitled to the following in compensation for damages:

• Cleaning	\$754.08
• Colonial Door Replacement.....	\$37.32
Total	<u>\$791.40</u>

Issue 3: Rent - \$1193.60

Relevant Submissions

40. [REDACTED] stated that the tenant's rent was paid and up-to-date for the period ending 30 April 2019.

41. However, she complained that the tenant had not paid rent for May 2019. She calculates that the tenant owes a pro-rated amount of \$1193.60 for May 2019.

Analysis

42. I accept [REDACTED]'s testimony in this matter and I accept her claim that no rent was paid for May 2019.

43. The landlord is seeking rent to the date that he regained possession of the rental unit and I therefore find that he is entitled to a payment of \$1193.55 (\$1850.00 for May 2019 ÷ 31 days x 20 days = \$1193.55).

Decision

44. The landlord's claim for a payment of rent succeeds in the amount of \$1193.55.

Issue 4: Late fees - \$43.00

Relevant Submissions

The Landlords' Position

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

Analysis

46. 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.

47. 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.

48. As the tenant has been in arrears since 02 May 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 5: Utilities – \$707.42

50. [REDACTED] stated that in addition to the rent, the tenant was also required to pay to the landlord the monthly costs of utilities. [REDACTED] submitted a letter at the hearing ([REDACTED] #300) showing that the landlord had subscribed to an Equal Payment Plan with Newfoundland Power and the monthly charge was \$430.00.

51. [REDACTED] stated that the tenant had not paid for the costs of the utilities for either April or May 2019. She is seeking \$430.00 for April 2019 and \$277.42 for May 2019.

Analysis and Decision

52. I accept [REDACTED]'s evidence in this matter and I accept her claim that the tenant had not paid for the utilities for either April or May 2019.

53. I find that the landlord is entitled to a payment of \$707.42 (\$430.00 for April 2019 and 277.42 for May 2019 (\$430.00 ÷ 31 days x 20 days)).

Issue 6: Security Deposit

54. [REDACTED] stated that the tenant paid a security deposit of \$1950.00. As the landlord's claim has been partly successful, he shall retain that deposit as outlined in this decision and attached order.

Issue 7: Hearing Expenses

55. [REDACTED] submitted a hearing expense claim form at the hearing and a receipt showing that she had paid \$20.00 to file this application, receipts totalling \$153.38 for the costs of developing photographs and a receipt for \$46.98 for the cost of sending the notice of the hearing by registered mail. She is also seeking \$235.65 for printer ink and \$6.89 for printer paper. Additionally, according to the claim form, JO is seeking \$126.44 as a travel expense to attend the hearing.

Analysis

56. Legitimate hearing expenses include fees for making an application to this Section, the costs of serving the claim and notice of the hearing (either personally, through registered mail or through a process server, etc.), the costs

of subpoenaing witnesses and the costs associated with preparing documents for the hearing (photocopies, development of photographs, etc.).

57. I therefore find that the landlord is entitled to an award for \$220.36 for her received expenses for the filing fee, the registered mail and the development of photographs.
58. I was not able to locate any receipts for the printer ink or for the paper and therefore those claims do not succeed. I am also sceptical that the landlord would have used \$235.65 in printer ink anyhow.
59. The costs of travelling to the hearing is not considered a legitimate hearing expense.

Decision

60. The landlord's claim for hearing expenses succeeds in the amount of \$220.36.

Summary of Decision

61. The landlord is entitled to the following:

- Compensation for Damages \$791.40
- Rent \$1193.55
- Late Fees \$75.00
- Utilities \$707.42
- Hearing Expenses \$220.36
- **LESS: Security Deposit..... (\$1950.00)**

Total Owing to Tenant **\$1037.73**

13 January 2020

Date


John R. Cook
Residential Tenancies Tribunal