

Residential Tenancies Tribunal

[REDACTED] Decision 19-0602-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:00 am on 11 September 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL and it was reconvened and adjourned 07 November 2019.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant" participated in the hearing. 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 \$625.00.
4. The landlord is seeking an order for compensation for damages in the amount of \$1195.34 and compensation for lost rental income in the amount of \$1250.00.

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 case is section 14 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Refund of Security Deposit - \$625.00

Relevant Submissions

7. The landlord and tenant entered into a monthly rental agreement commencing 01 May 2017 and a copy of the executed lease was submitted at the hearing. The agreed rent was set at \$1250.00 per month and it is acknowledged in the submitted rental agreement that the tenant had paid a security deposit of \$625.00.
8. The tenant served the landlord with a 1-month termination at the end of May 2019 and she vacated the property on 02 July 2019.
9. It was not disputed at the hearing that the landlord had not returned the deposit to the tenant after she had moved out nor was it disputed that the landlord and tenant had not entered into a written agreement on its disposition.
10. The tenant is seeking an order for a return of the full amount of the deposit.

Analysis

11. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

Security deposit

14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

(10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

(11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

12. There is no dispute that the landlord and tenant had not entered into a written agreement on the disposition of the security deposit. The landlord also stated that he has not made an application to the Director of Residential Tenancies to determine its disposition within the 10 days after he had been served with the tenant's application. As such, he is required, as per subsection 14.(12), to refund the full amount of the security deposit to the tenant.

Decision

13. The tenant's claim for refund of the security deposit succeeds in the amount of \$625.00.

Issue 2: Compensation for Damages - \$1195.34

Relevant Submissions

The Landlord's Position

14. After the tenant moved out, the landlord stated that he was required to carry out some repairs to the rental unit and he submitted the following breakdown of the costs to carry out those repairs:

• Damage to wall in downstairs rec room.....	\$300.00
• Paint	\$226.48
• Painting supplies	\$223.86
• Cleaning Services.....	\$400.00
Total.....	<u>\$1150.34</u>

Damaged Wall, Paint, Painting Supplies

15. The landlord stated that the tenant had caused damage to a wall in the downstairs rec room and he submitted photographs at the hearing showing that wall (■ #2-7) after it had been plastered.
16. The landlord stated that he had purchased supplies from a hardware store to carry out the repairs and a copy of that receipt was submitted with his application (■ #10). According to that receipt, the landlord had purchased drywall compound, a trowel, a taping knife, a vapour barrier and a drywall hawk. That receipt comes to \$223.86. The landlord denied that he had purchased a vapour barrier, however.

17. The landlord stated that he is not a professional plasterer or painter and he found the work to be overwhelming. In order to have the unit rented as quickly as possible, he abandoned his efforts to repair the wall and he hired a professional. He submitted a receipt at the hearing (█ #8) showing that he was charged \$345.00 to have the rec room plastered and painted.
18. The landlord also submitted a receipt for \$226.48 for the costs of purchasing 6 gallons of paint. 1 gallon of that purchase was used for the rec room. He claimed that he had his painter repaint the dining room, the kitchen, the stairwell as well as the 2 upstairs bedrooms. The landlord is not seeking the costs of hiring his painter to paint those rooms, but he argued that the tenant should pay for some of the paint that he had purchased.
19. The landlord stated that the rental unit is only 5 years old, and the unit was last painted 5 years ago.

Cleaning

20. The landlord submitted an additional 64 photographs at the hearing (█ ##11-74), the bulk of which concern the issue of cleaning. These photographs show that there is some dust and dirt on the floors in places, that there is dirt on some windowsills and in some cupboards. They also show that the stovetop and oven are not completely clean and that the area behind the washing machine was dirty.
21. The landlord stated that he hired the tenant from the basement apartment to carry out the cleaning and he submitted a receipt at the hearing showing that he had paid her \$400.00 for 20 hours of cleaning.
22. According to that receipt, in addition to cleaning, the cleaner had to remove garbage from the property as well as food which had been left in the freezer.

The Tenant's Position

Damaged Wall, Paint, Painting Supplies

23. The tenant acknowledged that she had damaged the wall in the rec room. She stated that that damage was caused by a recliner that her son was using in that room. She denied that she had caused any other damage to any of the other walls in the rental unit.
24. Regarding the costs the landlord is seeking here, the tenant argued that those costs are excessive for the amount of damage she had caused.
25. She also questioned the legitimacy of the receipts the landlord had submitted and pointed out some inconsistencies in his testimony. For instance, she pointed out that the landlord had stated that he hired a professional painter on either 04

July or 05 July 2019, but the paint for the rec room, according to the submitted receipt was not purchased until 20 July 2019.

26. She also questioned why the rec room had to be plastered by a professional as the landlord already had that room plastered on 02 July 2019 when she did the walkthrough.

Cleaning

27. The tenant acknowledged that the unit was not perfectly cleaned after she vacated and she claimed that on 02 July 2019, after the walkthrough, she had offered to carry out the cleaning herself or to hire a professional. That offer was refused.
28. The tenant challenged the costs the landlord is seeking here and argued that it would not take 20 hours to clean the floors and oven.
29. She also questioned the breakdown of the cleaning that was listed on the invoice the landlord had submitted. She denied that there was any garbage left behind at the unit or that there was any food left in the refrigerator. She pointed out that none of the photographs submitted by the landlord show that there was any garbage left in the unit and no garbage is shown in the photographs she submitted (█ #1).
30. She also argued that the refrigerator was clean when she vacated and there was no need for the cleaner to spend 3 hours cleaning it, as indicated on the invoice. She again pointed out that no photographs were submitted showing the condition of the refrigerator. She also claimed that the refrigerator was dirty when she moved in and she had to clean it at that time.
31. The tenant pointed to her photographs which show the condition of the bathroom after she moved out and stated that there was no need for the cleaner to carry out an “extensive clean of washrooms” as stated on the invoice. She also claimed that there no need to remove, clean and then re-install the blinds in the unit.

Analysis

32. 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*

33. A landlord is expected to repaint a rental unit every 3 to 5 years as a result of normal wear and tear. As the unit was last painted 5 years ago, the landlord would probably have had to repaint the unit soon anyhow.
34. However, the damage caused to the wall in the rec room seems to exceed what could be described as normal wear and tear and I therefore find that the tenant is responsible for the costs of repairing that damage.
35. These repairs would include the plastering of the damaged area, priming that area and repainting the wall. I find that \$100.00 is fair compensation for the costs of materials and labour for that work.
36. Regarding the cleaning, I agree with the tenant that the evidence submitted by the landlord does not warrant a claim for 20 hours of cleaning. I also agree with her that the landlord had failed to produce enough evidence to establish that

there was any garbage or food left at the unit or to establish that the refrigerator needed to be cleaned.

37. Based on the landlord's photographs, I find that he entitled to compensation for the time it would take to clean the floors, clean the oven and stove and to wipe down the window sills and cupboards.
38. I find that 6 hours is a reasonable amount of time to carry out that work. Policy with this Section is that a landlord may claim \$19.40 for their personal labour and I therefore find that the landlord is entitled to \$116.40 (6 hours x \$19.40).

Decision

39. The landlord's claim for compensation for damages succeeds in the amount of \$216.40, determined as follows:

• Repair damaged wall.....	\$100.00
• Cleaning	\$116.40
Total.....	<u>\$216.40</u>

Issue 3: Compensation for Lost Rent – \$1250.00

Relevant Submissions

The Landlord's Position

40. The landlord stated that after he had received notice from the tenant that she was going to vacate at the end of June 2019 he started advertising the unit on Kijiji. He stated that there were no viewing of the apartment prior to the tenant vacating on 02 July 2019, and he claimed that he never shows a rental unit to prospective renters while it is still occupied.
41. Nevertheless, he claimed that there was someone interested in renting the property for July 2019. However, the landlord stated that that person eventually changed his mind about moving into the unit as he was in the middle of divorce proceedings.
42. The landlord stated that prior to 02 July 2019 he was unaware that there were any damages to the rec room or that the tenant would not have adequately cleaned when she vacated. But he claimed that because of those issues he was unable to rent the apartment for July 2019.
43. The landlord is seeking an order for a payment of \$1250.00 for the lost rental income he suffered for July 2019.

The Tenant's Position

44. The tenant stated that there were no showings of the apartment after she had given the landlord her notice and she stated that she was unable to reach the landlord at all during the month of June 2019. She also claimed that she had not seen any advertisements for the unit during June 2019.
45. The tenant stated that she had done nothing to prevent the landlord from renting the unit for July 2019. She argued that the damage to the wall and the issue with the cleaning cannot be the reason the unit was not rented as the landlord did not visit the unit during June 2019 and she only made him aware of the damage to the wall on 02 July 2019.

Analysis

46. I agree with the tenant in this matter. As the landlord was not aware of any issues with damages or cleaning prior to 02 July 2019, that cannot be the reason why the unit was vacant during that month.
47. It seems more probable that the reason the landlord had no one lined up to move in at the beginning of July 2019 was because he had not shown that unit to any prospective tenants and because the one person who was interested ended up backing out. That is not the tenant's fault and she cannot be held liable for the loss of income the landlord suffered as a result.
48. The tenant did not have all of her possessions removed from the unit until 02 July 2019 and I find that the landlord is therefore entitled to rent for the first 2 days of July 2019: \$80.65 ($\$1250.00 \div 31 \text{ days} \times 2$).

Decision

49. The landlord's claim for a payment of rent succeeds in the amount of \$80.65.

Issue 4: Hearing Expenses

50. As the tenant's claim has been successful, the landlord shall pay her hearing expense of \$12.78 for the costs of serving the landlord with notice of the hearing by registered mail and \$8.73 for the costs of developing her photographs.

Summary of Decision

51. The tenant is entitled to the following:

- a) Refund of Security Deposit\$625.00
- b) Hearing Expenses.....\$21.51

c) LESS: Compensation for Damages (\$216.40)
d) LESS: Rent (\$80.65)

e) Total Owing to Tenant.....\$349.46

13 March 2020

Date


John R. Cook
Residential Tenancies Tribunal