

Residential Tenancies Tribunal

Decision 19-0621-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:15 pm on 17 September 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", did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$418.07, and
 - Authorization to retain the security deposit of \$45.00.

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 is section 21 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

6. The tenant was not present or represented at the hearing. I was able to reach her by telephone from the hearing room but she informed me that she did not wish to participate in the hearing. 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 the 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. The landlord submitted an affidavit at the hearing stating that the tenant was served with notice of the hearing, by registered mail, on 19 August 2019. A copy of the tracking history was attached to that affidavit. The tenant has had 28 days to provide a response. 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 her absence.

Issue 1: Compensation for Damages - \$418.07

Relevant Submissions

The Landlord's Position

7. The landlord stated that she had entered into a monthly rental agreement with the tenant on 01 August 2012 and a copy of the executed lease was submitted with her application (■ #1). The rent at that time was set at \$630.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$300.00.
8. On 03 June 2019, the landlord was informed by Newfoundland Power that the electricity to the tenant's apartment had been disconnected. As a result, the landlord issued the tenant a termination notice under section 21 of the *Residential Tenancies Act, 2018* (■ #2). That notice had an immediate terminate date of 03 June 2019.
9. On that same day, the Director of Residential Tenancies issued the landlord an emergency Order of Possession and that order was enforced by the Sheriff a couple of days later.
10. The landlord stated that after she regained possession of the rented premises she discovered that there were some damages caused to the unit and she submitted the following breakdown of the costs to carry out repairs (■ #3):
 - 1 gallon of primer..... \$19.20
 - 2 light shades \$34.56
 - Closet door \$75.00
 - Clean refrigerator..... \$37.50
 - Replace screen in bedroom..... \$37.50
 - Labour 195.00

Total + HST..... \$418.07

Primer

11. The landlord stated that the rental unit was last painted in 2012 and she acknowledged that it would now have to be repainted anyhow. However, the landlord pointed out that in the lease it states that if the tenant changes the colour of the walls, she is responsible for returning those walls back to the same colour before she vacates.
12. The landlord stated that the tenant had painted the bathroom, the living room and part of the kitchen a bright orange colour and photographs were submitted at the hearing (■ #4). Before those areas can be repainted, they first must be primed because of the colour the tenant had chosen and the landlord argued that the tenant should bare the costs of applying primer to those areas.
13. The landlord stated that her maintenance department charges \$19.20 for 1 gallon of primer and the hourly rate for labour is \$32.50.

Light Shades

14. The landlord stated that the globes covering 2 light fixtures in the unit were missing after she regained possession of the property and photographs were submitted at the hearing (■ #5). She claimed that they had been at the property since 2012, when the tenant first moved in.
15. The landlord's maintenance department charges \$17.28 for each of these globes.

Closet Door

16. Regarding the closet door, the landlord submitted photographs at the hearing (■ #6) showing that one of the sliding panels on that door had a large crack and hole in it which the landlord suspected was the result of being kicked.
17. That panel had to be replaced and the maintenance department charges \$75.00 for each of those panel doors.

Clean Refrigerator

18. At the hearing, the landlord requested that this portion of her claim be removed.

Replace Screen in Bedroom

19. The landlord also submitted a photograph at the hearing (■ #7) showing that the screen, frame included, for the bedroom window was missing. Her maintenance department charges \$37.50 for the costs of replacing these screens.

Analysis

20. 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;*

21. Regarding the painting, it is expected that a landlord would have to repaint the walls in a rental unit every 3 to 5 years as a result of normal wear and tear and since unit was last painted in 2012, it was time for it to be repainted anyhow. I agree with the landlord, though, that the tenant had agreed in her lease that the colour of the walls were to be returned to their original colour before she vacated.

Because these walls were painted a bright orange, the landlord was required to carry out some priming which she otherwise would not have had to do. I find that the tenant is therefore responsible for the costs of priming the walls before the painting could begin.

22. The landlord's evidence also shows that there are 2 light shades missing, that a window screen is missing and that there is a large crack in one of the panel doors. I therefore also agree with the landlord that the tenant is responsible for the replacement costs she is seeking here.
23. Regarding the costs the landlord is seeking here, I find that the tenant is responsible for the full costs of priming the unit. With respect to the screen, closet and light shades, as these items were 8 years of age when the tenancy ended, I find that the landlord is entitled to a depreciated award. Based on a 20 year life expectancy for each of these items, I reduce the amount sought by the landlord by 40%.
24. I award the landlord for full costs for labour sought here.

Decision

25. The landlord's claim for compensation for damages succeeds in the amount of \$318.56 determined as follows:

• 1 gallon of primer + HST	\$22.08
• 2 light shades + HST	\$23.85
• Closet door + HST	\$51.75
• Replace screen in bedroom + HST	\$25.88
• Labour	195.00
 Total.....	<u>\$318.56</u>

Issue 2: Security Deposit

26. The landlord stated that the tenant had paid a security deposit of \$300.00 on 24 July 2012 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and order.

Issue 3: Hearing Expenses

27. The landlord submitted a hearing expense claim form and a receipt for \$20.00 for the costs of filing this application as well as a receipt showing that she had paid \$15.42 to send the notice of the hearing to the tenant by registered mail. As the landlord's claim has been successful, the tenant shall pay these expenses.

Summary of Decision

28. The landlord is entitled to the following:

- a) Compensation for damages \$318.56
- b) Hearing expenses..... \$35.42
- c) LESS: Security deposit..... (\$300.00)

Total Owing to Landlord \$53.98

24 March 2020

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal