

Residential Tenancies Tribunal

Decision 19-0677-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 26 November 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant and landlord, [REDACTED], was represented at the hearing by [REDACTED] ("[REDACTED]") and [REDACTED] ("[REDACTED]"). The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - A determination of the validity of a termination notice issued to her;
 - An order for vacant possession of the rented premises;
 - An order for compensation for damages in the amount of \$3207.18; and
 - Authorization to retain the security deposit of \$250.49.

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

Preliminary Matters

6. [REDACTED] amended the landlord's application at the hearing and stated that she was no longer seeking the determination of the validity of a termination notice and she was no longer seeking an order for vacant possession of the rented premises.

Issue 1: Compensation for Damages - \$3207.18

Relevant Submissions

7. █ stated that she had entered into a monthly rental agreement with the tenant on 22 November 2009 and a copy of that agreement was submitted with her application (█ #1). At that time, the rent was set at \$640.00 and it is acknowledged in the rental agreement that the tenant had paid a security deposit of \$250.00.
8. On 01 January 2019 the tenant issued the landlord a termination notice and a copy of that notice was submitted with the landlord's application (█ #3). That notice states that the tenant would vacate on 01 February 2019 and she vacated on that date.
9. █ stated that he was required to carry out a significant amount of repairs after the tenant vacated and with the landlord's application he submitted a breakdown of the costs to carry out those repairs (█ #4) as well as photographs showing the condition of the unit after the tenant moved out.

Cleaning

10. █ stated that the unit had not been properly cleaned before the tenant vacated. He claimed that he had to clean the refrigerator and stove and he is seeking total compensation for that work in the amount of \$89.25. He also claimed that he was required to wash all the windows and floors at the unit. In addition, █ claimed that he was required to remove various articles from the property. He pointed to his photographs which show that in the backyard the tenant had left behind 2 pallets and a punching bag. He also stated that a closet system had to be removed as well as flooring.

Painting

11. █ pointed out that there is a clause in the rental agreement that stipulates that the tenant was to return the walls to their original condition and colour before she vacated. █ stated that the tenant had painted many of the walls a dark colour sometime during her tenancy and she did not repaint before she vacated.

Baseboards

12. █ pointed to the submitted photographs showing that the tenant had removed the baseboards. He is seeking the costs of replacing those baseboards, but no quote or estimate was submitted at the hearing.

Hush Grills

13. █ pointed to a photograph of one of the hush grills for the air exchanger. That grill was very dirty and █ stated that it could not be cleaned. He stated that 3 of these grills had to be replaced at the unit. █ stated that these grills may have been installed in the 1990s.

Closet Doors

14. █ also stated that 2 closet doors at the unit also had to be replaced as they were damaged beyond repair. He claimed that there were holes in the doors and that the tracks were bent. █ submitted a copy of a quote at the hearing showing that one of these doors cost \$175.00 + tax and the other cost \$225.00 + tax. █ stated that these prices were revised on a telephone call with this company and have increased to \$275.00 and \$375.00, respectively.

Replace Window

15. █ submitted a photograph of the window in the front bedroom and he stated that the window was broken and that there were holes in it. That window has since been replaced and the landlord submitted a copy of an invoice (█ #7) showing that he was charged \$230.00.

The Tenant's Position

Cleaning

16. The tenant stated that the reason she had to terminate her rental agreement was because she had ulcerated feet and her limbs had to be amputated. She stated that she was no longer able to get around the apartment.
17. Regarding the cleaning, the tenant claimed that she had the unit cleaned to the best of her ability and the whole unit was empty when she vacated. She also stated that she had cleaned the refrigerator and stove before she vacated.

Painting

18. The tenant stated that because of her medical condition, she was unable to repaint the apartment. She stated that she was no longer able to climb the stairs in the unit and she had a hospital bed placed in her living room on the main floor.
19. The tenant complained that the landlord had not carried out any painting during her 10 year tenancy and she also claimed that the landlord was supposed to provide her with paint every several years but none was ever given to her.

Baseboards

20. The tenant stated that she removed the baseboards when she installed laminate flooring in the rental unit. She claimed that there was initially a tile floor in the unit but she claimed that it was very old and worn and could not be cleaned. She also stated that it had suffered water damage. The tenant stated that she laid the new floor to improve the apartment and the baseboards were removed at that time. She claimed that the baseboards were very old and some of them cracked when removed. She stated that she was unable to replace those baseboards because she had become sick.

Hush Grills

21. The tenant stated that she was unable to get up and clean the grills as they were in the ceiling and she had a leg missing. The tenant also said that she had been living at the unit for 10 years and the air exchanger was inspected annually and there was never any indication that there was a problem with the grills. The tenant suggested that the grills may have been dirty before she moved in.

Closets

22. The tenant stated that she had to remove the closet doors so she could install the laminate flooring. She stated that the bottom of these doors needed to be cut so they could be reinstalled and she stated that she had spoken to the landlord about that matter several times and she had promised her that they would send someone to the unit to do that for her. The tenant stated that the doors and the tracking were left behind at the unit and she hadn't rehung the doors because she doesn't know how to. The tenant denied that the doors were damaged.

Window

23. The tenant denied that she had damaged this window and she claimed that it was in good condition when she vacated. She also stated that these windows had only just recently been installed. The tenant stated that if there was any damage caused to the window, it could have happened after she vacated.

Analysis

24. 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*

25. With respect to the cleaning, I was not persuaded that much work had to be carried out after the tenant vacated. The tenant stated that she had cleaned the refrigerator and stove before she vacated and the photographs submitted at the hearing do not show that these appliances needed cleaning. The photographs also do not bear out the landlord's claim that the floors and windows required cleaning. I do agree with the landlord that 2 pallets and a punching bag were left in the yard and I find that she is entitled to costs of having those items transported to the dump. I find \$50.00 to be a fair award.
26. With respect to the painting, █ is right to point out that the tenant was required, as part of their rental agreement, to return the walls to their original condition and colour before she vacated. However, statutory condition 1 in section 10 of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

1. Obligation of the Landlord -

- (a) The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.***
- (b) Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.***

I interpret this statutory condition to mean that landlords are responsible for the regular maintenance and upkeep of rental units, not tenants, regardless of what they may have agreed to in a lease. Tenants are only responsible for damage that was caused through some deliberate or negligent act.

27. It is expected that a landlord would have to repaint a rental unit every 3 to 5 years as a result of normal wear and tear. As this unit was last painted prior to 2009, it had outlived its life expectancy and would need repainting anyhow, even if the tenant had not changed the colours of the walls. As such, the claim for painting does not succeed.
28. The tenant acknowledged that she is responsible for replacing the baseboards. However, no evidence was submitted to the Board establishing what it would cost to have these baseboards replaced. Hence, that claim fails.
29. With respect to the hush grills, the landlord's photograph does show that one of those grills was dirty and may have needed to be replaced. However, the landlord submitted no evidence showing the replacement costs of these grills and as the tenant pointed out, no evidence was submitted at the hearing showing their condition when the tenant moved in.
30. Regarding the closets, I accept the landlord's evidence which shows that they had been removed from their tracks by the tenant. I can't discern any damage in the landlord's photographs, however, and the tenant denied that she had caused damage to these doors.

31. However, the tenant did state that these doors no longer fit the closets because she had installed new laminate floors and I agree that these doors therefore need to be replaced. The quote submitted at the hearing shows that it would cost \$460.00 to supply and install these doors (\$175.00 + tax, and \$225.00 + tax). Given that these doors are at least 10 years old, and given that interior doors have an expected lifespan of 20 years, I find that the landlord is entitled to a depreciated award of \$230.00.
32. I do not discern any damage in the photograph of the window and the tenant stated that it was not damaged when she vacated.

Decision

33. The landlord's claim for compensation for damages succeeds as follows:

• Garbage removal	\$50.00
• Replace closets.....	\$230.00
Total Owing to Landlord	<u>\$280.00</u>

Issue 2: Security Deposit

34. The tenant paid a security deposit of \$250.00 on 19 November 2009 and receipt of that deposit is acknowledged in the submitted rental agreement.
35. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and attached order.

Issue 3: Hearing Expenses

36. [REDACTED] submitted a hearing expense claim form and a receipt showing that she was charged \$27.50 to hire a process server, a receipt for \$20.00 to file this application, and a receipt showing that she had paid \$9.26 to send the tenant the application by registered mail.
37. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

Summary of Decision

38. The landlord is entitled to the following:

a) Compensation for Damages	\$280.00
b) Hearing Expenses.....	\$56.76
c) LESS: Security Deposit.....(\$250.00)	
Total Owing to Landlord	<u>\$86.76</u>

16 April 2020

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal