

Residential Tenancies Tribunal

Decision 19-0731-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 am on 15 January 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
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 \$1250.00.
4. The landlord is seeking an order for compensation for damages in the amount of \$672.87 and authorization to retain that amount of the security deposit.

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: Compensation for Damages - \$672.87

Relevant Submissions

The Landlord's Position

7. The landlord and tenant entered into a 6-month, fixed-term rental agreement on 25 November 2018 and a copy of the executed lease was submitted with the tenant's application (█ #1). The agreed rent was set at \$2500.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$1250.00.
8. The tenancy ended on 17 August 2019. The landlord stated that no walkthrough was conducted when the tenancy ended and there is no report of an incoming or outgoing inspection.
9. The landlord stated that after the tenant vacated, she discovered that he had caused some damages to the rented premises and she submitted the following breakdown of the costs to carry out repairs:

• Replacement costs of rug	\$250.00
• Repair washing machine	\$234.22
• Repair refrigerator	\$188.65
Total.....	<u>\$672.87</u>

Rug

10. The landlord stated that after she regained possession of the property she noticed that an area rug that had been in the home-theatre was missing and she was subsequently informed by the tenant that he had disposed of it during his tenancy.
11. The landlord submitted a photograph of that rug with her application (█ #1) as well as a screenshot from Pier 1 showing that a replacement rug would cost \$259.99. The rug has not yet been replaced.
12. The landlord stated that the rug was purchased 5 years ago, from Pier 1, and she stated that she had paid approximately \$249.00 for it at that time. She also stated that that rug was in good condition when the tenant moved in.

Washing Machine

13. The landlord stated that after the tenant moved out she was notified by her new tenant that the washing machine was not working properly. She testified that she was informed that water was not draining from the washing machine and clothes would be very wet at the end of the cycle.

14. The landlord stated the issue with the washing machine occurred just days after the tenant moved out and she inferred that it had to have happened during his tenancy. However, she complained that the tenant never gave her any indication that there was a problem with the washing machine during his tenancy.
15. With her application, the landlord had submitted an invoice (█ #3) showing that she was charged \$234.22 to have the washing machine repaired. She stated that the washing machine was 5 years old.

Refrigerator

16. The landlord also stated that her new tenant reported to her that the refrigerator door was not closing properly. She had a technician inspect the refrigerator and a part had to be ordered for the repair. Her invoice (█ #4) shows that she was charged \$180.16 to have that work carried out. The refrigerator was also 5 years old.

The Tenant's Position

Rug

17. The tenant stated that the rug became damaged during his tenancy and he discarded it. He stated that he is willing to pay the costs to have it replaced, but he argued that the screenshot submitted by the landlord from Pier 1 does not match the pattern of the rug in her photograph.
18. The tenant submitted his own photographs of the rug at the hearing (█ #4) and he claimed that that exact same rug can be purchased at Walmart. He submitted a screenshot from that department store showing that a new rug would cost \$39.97.

Washing Machine

19. The tenant stated that the washing machine was working fine during his tenancy and he had no issue with water draining from the machine. He also testified that he had done some washing just the day before he vacated and there were no issues.
20. The tenant also pointed out that if there was an issue with the washing machine, he would have informed the landlord about that matter as he had done with other issues that had cropped up during his tenancy.

Refrigerator

21. The tenant stated that the refrigerator door was broken when he first moved into the unit and that that damage was not caused by him.
22. He claimed that although it was broken, he was still able to close the refrigerator door by manually pushing in a piece that preventing it from closing. As the refrigerator was functioning, he never informed the landlord about that minor inconvenience.

Analysis

23. 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

24. With respect to the rug, the tenant acknowledges that he is responsible for the costs of a replacement. On inspection of the photographs of the rug and the screenshots from Pier 1 and Walmart, I agree with the tenant that the rug on sale at Walmart more closely resembles the rug in the photographs. The diamond pattern meets the edges of the rug in the exact same places as seen in the photographs and the intersections of the diamonds more closely resembles what is seen in the Walmart image. As such, I find that the landlord is entitled to a payment of \$45.97 (\$39.97 + tax).
25. Regarding the washing machine, I find that the landlord has not submitted enough evidence to establish that this damage had occurred during the tenant's tenancy (e.g., a condition report) and it seems just as likely that it could have happened after he had moved out. Additionally, even if the machine broke during the tenant's tenancy, no evidence was presented to establish how that damage had occurred or whether it was the result of any deliberate or negligent act on the part of the tenant. Hence, that portion of the landlord's claim fails.
26. I also find that the landlord's claim for the costs of repairing the refrigerator does not succeed. The landlord has failed to establish that this damage occurred during this tenancy and the tenant claimed that this was the condition of the refrigerator when he moved in. Additionally, even if it did happen during this tenancy, the landlord stated at the hearing that she did not believe that that damage was caused by a deliberate or negligent act.

Decision

27. The landlord's claim for compensation for damages succeeds in the amount of \$45.97.

Issue 2: Security Deposit

28. There is no dispute that the tenant had paid a security deposit of \$1250.00 when he moved into the unit. As the landlord's claim for compensation for damages has been partially successful, she shall retain that portion of the security deposit and return the remainder to the tenant as outlined in this decision and attached order.

Summary of Decision

29. The tenant is entitled to the following:

- a) Refund of Security Deposit\$1250.00
- b) LESS: Compensation for Damages (\$45.97)
- c) Total Owing to Tenant.....\$1204.03

27 April 2020

Date

John R. Cook
Residential Tenancies Tribunal