

Residential Tenancies Tribunal

Decision 19-0868-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:20 am on 05 February 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2", respectively, also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$777.88; and
 - Authorization to retain the security deposit of \$525.00.

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 policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

6. The landlord called the following witness:
 - [REDACTED] – Landlord's father

Issue 1: Compensation for Damages - \$777.88

Relevant Submissions

The Landlord's Position

7. The landlord and tenants entered into a monthly rental agreement on 29 March 2019 and the landlord submitted a copy of that executed agreement at the hearing (■ #1). The agreed rent was set at \$700.00 and it is acknowledged in the agreement that the tenants had paid a security deposit of \$525.00.
8. The landlord submitted a discontinuance agreement at the hearing (■ #8) showing that the landlord and the tenants had agreed to end the tenancy on 29 October 2019 and the tenants vacated on that date.
9. The landlord stated that after the tenants vacated, she discovered that they had caused some damages to the property and she submitted with her application a spreadsheet (■ #3) outlining the costs of repairs. The breakdown is as follows:
 - 2 baseboard heaters..... \$153.84
 - Labour to install heaters \$100.00
 - 3 gallons of paint, painting supplies..... \$113.37
 - Baseboard \$10.68
 - Labour to paint and clean \$400.00

Total..... \$777.89

Baseboard Heaters

10. The landlord stated that the apartment was constructed 8 years ago and it was outfitted with electrical baseboard heaters at that time. She stated that they were in perfect condition when the tenants moved in.
11. The landlord submitted a USB drive at the hearing and she pointed to photographs showing the baseboard heaters in the kitchen and the bedroom. The heater in the bedroom has scratches on its face and the heater in the kitchen is dented on one end.
12. Because of this damage, the landlord replaced the heaters and she submitted a receipt (■ #4) showing that she had purchased 2 new heaters at a cost of \$141.71. She also submitted an e-mail from her electrician (■ #5) in which he writes that he installed these 2 heaters and charged the landlord \$100.00 for that work.

Painting and Plastering

13. The landlord also complained that the tenants had caused some damage to the walls and the baseboards. She testified that the unit was freshly painted before

the tenants moved in and she was required to touch up some of the walls and she had to replace 1 piece of baseboard.

14. In support of her claim, the landlord pointed to the photographs on the submitted USB drive. Several photographs show that a baseboard had been plastered by the tenants in an attempt to repair some damage that had been caused to it. Other photographs show that there were some nicks in the walls and trim and in the photographs of the bedroom there were several places on a wall where paint had been removed.
15. The landlord submitted a receipt (█ #6) showing that she had purchased a new baseboard at a cost of \$10.68. She also submitted a receipt (█ #7) showing that she had spent \$228.21 on paint and supplies before the tenancy began. For the touch-ups, the landlord said she used leftover paint from before the tenants moved in.

Cleaning

16. The landlord also claimed that the tenants had not adequately cleaned the apartment before they vacated and she pointed to her photographs which show that there were hairs and dust found on the baseboards, in the fins of the heaters and on the floors.

The Tenants' Position

17. Tenant2 stated that he did not recall seeing any damage or dents on the heaters when they vacated and he claimed that these heaters were not damaged during their tenancy.
18. Tenant1 also denied that she had caused any damage to the heaters. She also argued that the damage seen in the landlord's photographs is minor and would not impair the functionality of the heaters and they did not need to be replaced.

Painting and Plastering

19. Tenant1 acknowledged that she had caused that damage to the baseboard. She stated that she had hung a picture on that wall and it fell causing the damage. She stated that she tried to repair that damage by plastering and painting the baseboard.
20. Tenant2 also acknowledged that he had caused some paint to peel off the wall in the bedroom. He stated that this damage was caused by the bed's headboard. He claimed, however, that he had offered to repair that damage and the landlord had told him to not worry about it and that she would repair that damage herself.

Cleaning

21. Tenant2 stated that the unit was thoroughly cleaned before he vacated and he submitted his own pictures at the hearing showing the condition of the unit after they had vacated. He testified that these photographs show that the unit was left in a very clean state.

Analysis

22. 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

23. Regarding the baseboard heaters, I find that the landlord had not presented enough evidence to establish that the damage seen in the submitted photographs was caused by the tenants. There is no report of an incoming or outgoing inspection and the tenants denied that they had caused this damage during their tenancy. I also note that some scratches can be seen on a baseboard heater in the landlord's before-pictures (IMG_0329.jpg). Hence, her claim for the replacement costs of these heaters does not succeed.
24. Regarding the plastering and painting, the landlord's evidence does show that there were some nicks and scratches in some walls and baseboards. Much of that damage, however, does not exceed the standard of normal wear and tear. I do find, however, that the tenants are responsible for the costs of replacing a baseboard and for the costs of touching up the wall which was damaged by their headboard. I find that \$100.00 is a fair award for materials and labour.
25. Regarding the cleaning, the tenants' photographs do show that the unit was in good condition when they vacated. The landlord's photographs just show that the cleaning was not perfect and that the tenants had overlooked a few hairs and dust bunnies. Hence, the landlord's claim does not succeed.

Decision

26. The landlord's claim for compensation for damages succeeds in the amount of \$100.00.

Issue 2: Security Deposit

27. The tenants paid a security deposit of \$525.00 on 11 March 2019 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been partly successful, she shall retain \$100.00 of the security deposit return the remaining portion as follows:
 - a) Security Deposit \$525.00
 - b) LESS: Compensation for Damages..... (\$100.00)

Total Owing to Tenants \$425.00

07 May 2020

Date

John R. Cook
Residential Tenancies Tribunal