

## **Residential Tenancies Tribunal**

Decision 19-0877-05

John. R. Cook  
Adjudicator

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### **Introduction**

1. The hearing was called at 1:10 pm on 27 January 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] ("[REDACTED]") and [REDACTED] ("[REDACTED]") participated in the hearing. The respondent, [REDACTED] ("[REDACTED"]), hereinafter referred to as "the landlord", also participated. He was represented at the hearing by [REDACTED] ("[REDACTED"] and [REDACTED] ("[REDACTED"]).

### **Issues before the Tribunal**

3. The tenants are seeking an order for a refund of the security deposit in the amount of \$600.00.
4. The landlord is seeking an order for a payment of \$3902.77 in compensation for damages and authorization to retain 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 - \$3902.77

### Relevant Submissions

#### The Landlord's Position

7. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenants on 15 July 2018 and a copy of the executed lease was submitted at the hearing (█ #1). The agreed rent was set at \$800.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$600.00.
8. The tenants issued the landlord a termination notice on 01 August 2019 (█ #2) informing him that they would be moving out on 01 September 2019. They vacated on that date.
9. No walkthrough was conducted with the tenants after they moved out and there is no report of an incoming or outgoing inspection.
10. The landlord stated that after the tenants vacated he discovered that they had caused some damages to the rental unit and he submitted the following breakdown of the costs to carry out repairs (█ #3):

|                                 |                      |
|---------------------------------|----------------------|
| • Paint and plaster .....       | \$900.00             |
| • Painting supplies .....       | \$606.71             |
| • Cleaning .....                | \$360.00             |
| • Cleaning Supplies.....        | \$50.00              |
| • Replace countertop .....      | \$350.00             |
| • Replace carpet .....          | \$556.06             |
| • Replace laminate floors ..... | \$500.00             |
| • Late rent .....               | \$25.00              |
| • Loss of rent.....             | \$600.00             |
| <br>Total .....                 | <br><u>\$3947.77</u> |

#### Paint and Plaster

11. █ stated that, as far as she knew, the rental unit was last painted just before the tenants moved in in 2018. She testified that after the tenants moved out she discovered that there were marks from a permanent marker all over the walls in the rental unit. She claimed that there were marks on 2 walls in the small bedroom, on a heater, in a corner underneath the window in the master bedroom and all over the living room walls. She also complained that there was nail polish on the walls.

12. In support of her claim, [REDACTED] submitted 2 photographs showing the walls in the small bedroom ([REDACTED] #4, #6) and pointed to what she described as marks from a marker.
13. [REDACTED] stated that the whole apartment had to be repainted after the tenant moved out. She testified that it took 60 hours to repaint the apartment and she is seeking compensation in the amount of \$900.00 for 60 hours of labour, calculated at \$15.00 per hour.
14. The landlord is also seeking \$606.71 for the costs of purchasing painting supplies. I support of that claim, the landlord submitted 4 invoices from Kent ([REDACTED] ##7-10) totalling \$606.71. These receipts show that the landlord had purchased 13 gallons of paint, some painting supplies, shower heads and parts for a toilet.
15. 3 of the submitted receipts show that these purchases were made in late October 2019 and the other receipt shows that paint had been purchase in late August 2019. [REDACTED] stated that these purchasing were made to replenish the landlord's stockroom. She stated she used approximately 9.5 gallons of paint, from that stockroom, to paint the tenants' apartment. That work was carried out in mid-September 2019.
16. The landlord also submitted an affidavit from [REDACTED] ([REDACTED] #11) stating that he helped paint and that it took about 1 week to paint the unit.

#### Cleaning

17. The landlord is also seeking compensation for 16 hours of labour to clean the rental unit. He calculates that, at a rate of \$15.00 per hour, he is entitled to \$360.00. The landlord is also seeking \$50.00 for the costs of purchasing cleaning supplies. No receipts were submitted at the hearing and the landlord claimed that he had used supplies that he already had on hand.
18. [REDACTED] stated that the floors at the rental unit had not been swept or mopped, she complained that there was garbage left in the bathroom, that the bedrooms had not been cleaned and there was dust on the baseboard heaters. She also stated that the tenants had left a fish in the refrigerator and that the freezer had been turned off. No photographs were submitted at the hearing.
19. The landlord stated that the cleaning was carried out by [REDACTED] and [REDACTED] and he submitted affidavits from each of them ([REDACTED] #11, #12) detailing the work that they had carried out.

### Replace Countertop

20. █ stated that the countertop at the rental unit was installed in 2012 and she stated that she was told by █ that there was no damage to the countertop when the tenants moved in.
21. █ submitted a photograph at the hearing (█ #13) showing that there were a couple of areas where the countertop had bubbled and cracked and she surmised that the tenants must have laid a hot pot on the countertop causing that damage.
22. █ stated that the countertop has since been replaced and the landlord is seeking \$350.00 for the costs of a replacement. No receipt was submitted at the hearing. The landlord stated that he buys countertops in bulk and he had a replacement on hand in his storage room.

### Replace Carpet

23. █ stated that the industrial carpets in the rental unit were also installed in 2012 but she claimed that as she was not at the complex when the tenants moved in she could no comment on their condition.
24. She submitted 2 photographs at the hearing (█ #14, #15) showing that there were 2 places where there appeared to be what she described as glue on these carpets. █ stated that she was unable to remove the glue from the carpet and she claimed that the carpets were therefore replaced sometimes towards the end of September 2019.
25. █ stated that she already had carpet on hand at the complex which she used to replace the carpet in the tenants' apartment. Regarding the costs the landlord is seeking here, he submitted a shipping slip (█ #16) showing that he had paid \$556.06 for carpet to replenish their storeroom.

### Replace Laminate Floors

26. The laminate flooring in the apartment was also installed in 2012 and █ again stated that she was not there when the tenants moved in and she therefore did not know the condition of that laminate floor at that time.
27. █ submitted 2 photographs at the hearing (█ #17, #18) showing that there were 3 droplets of nail polish on the laminate floor in the apartment. She stated she had the laminate floors replaced in the unit and she is seeking compensation in the amount of \$500.00. No receipts or invoices were submitted at the hearing and █ stated that she used laminate flooring that the landlord already had on hand.

### Late Rent

28. █ stated that the tenants' rent for January 2019 was 5 days late and she has assessed a late payment fee of \$25.00. No rent records, receipts or cancelled cheques were submitted at the hearing.

### Lost rent

29. The landlord stated that the unit was not available or suitable for rent after the tenants moved out. He is seeking \$600.00 in compensation for the loss of rental income he had suffered during the month of September 2019. █ said that although they had no showings of the tenants' unit after she had received notice that they were moving out, she claimed that they always have a few vacant units at the complex and all the units have an identical layout. Prospective tenants view those vacant units, instead of occupied units, when they are deciding whether they wish to rent at the complex. No tenants were lined up to move into the tenants' unit for September 2019, but new tenants moved in in October 2019.

### The Tenants' Position

#### Paint and Plaster

30. █ submitted 20 photographs at the hearing showing the condition of the walls after he had moved out (█ #1-10). He pointed out that no damage can be seen in these photographs.

31. █ also complained that it was difficult to correlate the submitted receipts with any work that was carried out at his apartment as most of these purchases were made almost 2 months after he had moved out.

32. █ suggested that these receipts may have been receipts for the maintenance that was ongoing at the complex, which included the painting of the hallways and the replacement of the balconies.

#### Cleaning

33. █ stated that he had swept and mopped all the floors in the unit and he testified that he had cleaned everything in the apartment as well as he could.

34. In support of his claim, █ again pointed to the submitted photographs showing the condition of the unit after they had vacated.

35. He also submitted a checklist (█ #11) which he stated he had completed with his friend, █. Except for mould that the tenants had discovered on the closet wall in the small bedroom, the checklist indicates that everything was clean and in working order.

### Countertop

36. █ denied that he had laid anything hot on the countertops and he claimed that he had not caused the damage seen in the submitted photograph.
37. He also claimed that he carefully cleaned the countertops before he vacated and he does not recall there being any damage on them.

### Carpet

38. █ stated that the carpet was "not new" when he moved into the unit and he claimed that it was dusty. He stated that he was not aware of any glue stains on the carpet and █ testified that they did not have any glue at the unit during their tenancy.
39. █ pointed to an Apartment Inspection Check List (█ #19) which the landlord had submitted with his application, dated 01 November 2019, for a new tenant, █. According to that checklist, there is "glue on carpets in both rooms (bedrooms)". The tenant questioned whether the landlords had actually replaced the carpets in September 2019 if there is glue on them in November 2019.

### Laminate Floors

40. █ stated that she has not used nail polish on her fingers for quite some time and she denied that the droplets of nail polish shown in the photographs were caused by her.
41. █ stated that there was no need to replace the laminate floors because of those 3 droplets and he stated that they should be able to be wiped off the floors. He also argued that the landlord ought to have provided an invoice or receipt showing that he had incurred \$500.00 to have these floors replaced.

### Late Rent

42. █ denied that his rent for January 2019 was paid late. He stated that he paid that rent by cheque.

### Lost Rent

43. █ stated that after he had given his termination notice to the landlord he was expecting that they would carry out an inspection of the property or conduct a walkthrough of the unit. He testified that no arrangements were made to inspect the unit and there were no showings to prospective renters during the month of August 2019.

## Analysis

44. 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;*

45. The landlord submitted 2 photographs at the hearing in support of his claim that the unit needed to be repainted. However, I can discern no marks or damage, at all, in photograph █ #4. And though there does seem to be some dirt on the wall in photograph █ #6, it does not appear to be from a marker. The tenants'

20 photographs, however, show that walls were in good condition, with some minor wear and tear. Based on that evidence, I conclude that the landlord had not established, on the balance of probabilities, that the apartment needed to be fully repainted. As such, that portion of the landlord's claim does not succeed.

46. Regarding the cleaning, I also find that the landlord's claim fails. They presented no photographs in support of their claim, while the 20 photographs submitted by the tenants show that the unit was in good condition when they vacated. In those photographs, I see no dirt or dust on the floors and in the photograph of the refrigerator, no fish can be seen.
47. The landlord's claim for the costs of replacing the countertops also fails. No evidence was presented at the hearing showing the condition of the countertops when the tenancy began (e.g., a condition report) and in that respect, the landlord has failed to establish that this damage had been caused during this tenancy. Furthermore, no evidence was submitted showing the costs the landlord is seeking here (e.g., an invoice, receipt or estimate, etc.).
48. Regarding the carpet, I find that the landlord had failed to establish that this damage had occurred during this tenancy as there was no report of an incoming or outgoing inspection for this tenancy. For that reason, the landlord's claim does not succeed. I also agree with [REDACTED] that Exhibit [REDACTED] #19, an Inspection Checklist for [REDACTED], dated 01 November 2019, in which it is noted that there is glue on the carpet, does lead me to question whether these carpets were replaced in late September 2019 at all.
49. With respect to the laminate floors, I again have to conclude that the landlord had failed to establish that this damage had occurred during this tenancy and he also failed to establish the costs he is seeking here. Hence, that claim also fails. I again note that the Check List from 01 November 2019 states that there is nail polish on the floors, over a month after [REDACTED] stated that they had been replaced.
50. The landlord also failed to present any evidence to substantiate his claim that the tenants were late paying their rent in January 2019. That claim therefore also fails.
51. With respect to the loss of rental income, I also have to conclude that the landlord is not entitled to the costs he is seeking here as he has not established that the tenants were responsible for causing any damages to the unit.

## **Decision**

52. The landlord's claim for compensation for damages does not succeed.

## **Issue 2: Security Deposit**

53. The tenants stated that they had paid a security deposit of \$600.00 on 13 July 2018 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim for damages has not succeeded, they shall return the full amount of the deposit to the tenants.

### **Decision**

54. The tenant's claim for refund of the security deposit succeeds in the amount of \$600.00.

30 April 2020

Date

  
John R. Cook  
Residential Tenancies Tribunal