

## Residential Tenancies Tribunal

[REDACTED] Decision 19-0914-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:20 pm on 19 February 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively, participated in the hearing. The tenants, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", did not participate in the hearing.

### Issues before the Tribunal

3. The landlords are seeking an order for compensation for damages in the amount of \$10,241.23.

### 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, rule 29 of the *Rules of the Supreme Court, 1986* and William & Rhodes Canadian Law of Landlord and Tenant, (Carswell: Toronto, 1988).

### Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them by telephone from the hearing room. 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlords submitted affidavits stating that the tenants were served with notice of the rescheduled hearing on 04 February 2020. These notices were sent via text-message and e-mail using the numbers and addresses provided on the rental agreement. Copies of the text-message and e-mail were also submitted by the landlords. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence

### **Issue 1: Compensation for Damages - \$10,241.23**

7. Landlord1 stated that she had entered into a 1-year, fixed-term rental agreement with the tenants on 01 December 2017 and a copy of the executed lease was submitted with her application (█ #1). The agreed rent was set at \$1800.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$900.00.
8. On 28 July 2019 the landlords sent the tenants an e-mail informing them that they were terminating their rental agreement, effective 31 October 2019. On 01 September 2019, the tenants informed the landlords that they would be moving out at the end of September 2019 and the landlords regained possession of the property on 01 October 2019.
9. Landlord1 stated that the rental unit was only 3 years old when the tenancy began. There was no report of an incoming or outgoing walkthrough.
10. Landlord1 stated that the tenants had caused significant damages to the premises and with their application the landlords had submitted the following breakdown of the costs to carry out repairs (█ #5):

• Moldings, casings, window ledges .....	\$821.23
• Contractor fee.....	\$1500.00
• Painting .....	\$2300.00
• Replace downstairs door .....	\$200.00
• 2 broken windows.....	\$1500.00
• Bathroom light .....	\$160.00
• Utility basket for dishwasher.....	\$149.00
• Lawn care.....	\$800.00
• Cleaning .....	\$800.00
• Loss of rental income .....	\$3600.00
<b>Total.....</b>	<b><u>\$11,830.23</u></b>

Moldings, casing, window ledges

Contractor fee

11. Landlord1 stated that the tenants kept a pet rabbit at the unit and the tenants did not have it caged and it was permitted to move about in all areas of the house. She testified that in all the rooms in which the rabbit was permitted to roam, it chewed the baseboards, door casings and the window ledges. In support of her claim, the landlord submitted 10 photographs showing that damage (█ #6).
12. Landlord1 stated that she had to have the baseboards, casings and ledges replaced in the master bedroom, master ensuite, the entire hallway, in the other 2 upstairs bedrooms, including the closets, in the bathroom and the living room. She also had to replace the baseboards in the downstairs laundry area and in the downstairs hallway.
13. Landlord1 submitted an invoice (█ #7) showing that she was charged \$851.74 to purchase replacement baseboards and casings, and she also submitted an e-mail receipt (showing that she was charged \$1500.00 to have the damaged baseboards and ledges removed and then to have the new ones installed.

Painting

14. Landlord1 stated that the rental unit was painted 5 years ago, and when the tenants moved in the walls were "immaculate". She stated that after the tenants moved out she had to have various areas of the unit plastered and repainted.
15. Some of that plastering and painting was the result of the baseboards and window ledges being removed from the unit. Landlord1 complained, however, that there were many other areas that had to be repaired as a result of damages which were not caused by the rabbit.
16. She stated that the tenants had mounted 2 video projectors in the ceilings in 2 different rooms and after they were removed the holes had to be plastered and the whole ceiling repainted. She also stated that there were numerous areas in the house where there were gouges taken out of the drywall that also had to be re-plastered. 8 photographs showing this damage were submitted at the hearing (█ #9, #11).
17. Landlord1 also submitted photographs (█ #10), taken by her neighbour, which show that the tenants had been keeping their windows open while it was raining outside. She pointed out that this had caused some water damage to the walls.
18. Landlord1 stated that she hired a professional painter to carry out the plastering and painting in the upstairs portion of the house, and she submitted an invoice (█ #14) showing that she was charged \$2500.00 to have that work completed. She stated that she completed most of the repairs in the downstairs portion of the house and she submitted receipts (█ #13) showing that she had spent an additional \$159.81 on painting supplies.

### Replace Door

19. Landlord1 also claimed that the tenants had installed a door at the unit without their permission and she also complained that it had been installed improperly. She is seeking \$200.00 for the costs of removing the door and repairing the door jamb. No receipts or invoices were submitted at the hearing.

### 2 Broken Windows

20. Landlord1 also complained that the tenants had broken 2 windows at the rental unit, one on the side of the house and one in the front. These are the same windows that the tenants had been keeping open during rain storms as shown in Exhibit █ #10.
21. Landlord1 claimed that the hardware on these windows had been misused and the windows can no longer be closed from the inside. In order to secure the windows, they have to be pushed closed from the outside.
22. Landlord1 stated that these windows had to be replaced and she directed me to an internet link which shows that these windows each cost \$310.00 + tax. With the costs of installation included, landlord1 estimated that it would cost between \$1000.00 and \$1500.00 to have these windows replaced. She stated that these windows were just 5 years old.

### Bathroom Light

23. Landlord1 submitted photographs (█ #15) showing a light on the bathroom vanity and she pointed out that it was cracked off at its base. She is seeking the costs to replace that light and she directed me to an internet link showing that a replacement light costs \$149.99 + tax. That light was 5 years old.

### Utility Basket

24. Landlord1 also complained that after the tenants moved out she discovered that the utility basket for the dishwasher was missing. She replaced that basket and she submitted a copy of screenshot of a receipt showing that she was charged \$44.16 for a replacement.

### Lawn Care

25. Landlord1 stated that as part of their lease agreement, the tenants were responsible for lawn care. However, she stated that she had received complaints from her neighbours informing her that the tenants had not been cutting the lawn and she submitted photographs at the hearing (█ #18) showing the condition of the lawn.

26. Landlord1 testified that she had contacted the tenants about the matter in 2018 and they assured her that they would resolve the issue. However, the tenants did not live up to their promise and the landlord was required to hire a company to mow the lawn for her in both 2018 and 2019. She submitted copies of her INTERAC e-Transfer receipts showing that she had paid a total of \$511.00 for lawn care services during those 2 summers.

### Cleaning

27. Landlord1 also complained that the tenants had not adequately cleaned the unit before they vacated. She submitted into evidence e-mail correspondence she had with her cleaners, as well as pictures she had taken, outlining the cleaning that was required at the rented unit.

28. Landlord1 stated that there was rabbit hair found all throughout the apartment and there was additional dirt and dust on window ledges and on the blinds. She also complained that the refrigerator and stove had not been cleaned. Her submitted photographs (■ #21) also show that there was some sort of green putty found on the walls.

29. The submitted e-mails show that the landlords were charged \$475.00 to have the unit cleaned by a professional (19 hours at \$25.00 per hour.).

### Lost Rental Income

30. Besides the physical damages caused to the property, the landlords are also seeking \$3600.00 in compensation for 2 months of lost rental income. Landlord1 stated that because of the damages which had been caused to the property, they were unable to rent the unit during that time and it was not in a fit state to show to prospective renters.

31. Landlord1 stated that they had not been advertising the unit for rent after the tenants moved out and instead stated that they had been trying to sell the unit and it had been listed since August 2019.

### **Analysis**

32. 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*

33. With respect to the baseboards, casings and windows ledges, the landlords' evidence shows that they were heavily damaged during this tenancy and I accept landlord1's claim that they had to be replaced. Trim work has an expected lifespan of 20 years. Factoring in depreciation, I find that the landlords are entitled to replacement costs in the amount of \$1763.81  $(\$851.74 + \$1500.00) \times 15/20$ .

34. Regarding the painting, landlords are expected to repaint a rental unit every 3 to 5 years as a result of normal wear and tear and I find that as the rental unit was last painted 5 years ago, it would soon have to be repainted anyhow. As such, the majority of the costs the landlords are seeking here are costs that they soon would have incurred anyhow. Some of the costs incurred here, though, were related to the plastering of the moldings and to other damages caused by the tenants and I find that the landlord are entitled to some compensation for that work. I find \$500.00 to be fair.

35. Regarding the door, I accept the landlord's claim that the tenants had damaged the door jamb when they installed the door. No receipts or invoices were submitted for any material costs, but I find that the landlords are entitled to \$77.60 in compensation for 4 hours of their personal labour (policy with this Section is that an applicant may claim up to \$19.40 per hour for their personal labour).
36. Regarding the windows, I find that insufficient evidence was submitted to the Board to justify an award for the costs of replacement. There was no photographic evidence submitted showing that the windows were damaged or showing the extent or cause of the damage. Exhibit █ #10 merely shows that the windows were open. Furthermore, if the window hardware is broken, it may be less costly to have these parts repaired as opposed to having the windows completely replaced.
37. The photographs submitted by the landlords do show that the bathroom light is broken and I agree with the landlord's that they are entitled to the costs of having it replaced. Light fixtures have an expected lifespan between 10 and 15 years. I therefore find that the landlords are entitled to compensation in the amount of \$144.99 (\$149.99 + tax = 172.49 x 10/15).
38. Regarding the utility basket, I accept landlord1's claim that it was missing after the tenants vacated. Given that a dishwasher has an expected lifespan of 10 years, I find that the landlords are entitled to an award of \$22.08 (\$44.16 x 5/10).
39. I accept the landlords' evidence which shows that the tenants had not been maintaining or mowing the lawn, as required, and that they had incurred costs to have that work carried out themselves. Their e-Transfer receipts total \$511.00 and I find their claim succeeds in that amount.
40. I also accept the landlord's evidence showing that the unit had not been adequately cleaned before the tenants vacated and I accept their evidence which shows that they were charged \$475.00 to have the unit professionally cleaned.
41. Regarding the loss of rental income, though, I find that that claim does not succeed. Where landlords suffer damages, in this case, a loss of rental income as a result of damages caused to the property, they have a legal duty to mitigate those damages. Mitigation in these circumstances would amount to having the damages repaired as soon as feasible and then advertising the unit for re-rent.
42. However, in William & Rhodes Canadian Law of Landlord and Tenant, when discussing the issue of mitigation of damages, the authors point out that:

In Canadian Medical Laboratories Ltd. v. Stabile (1992), 25 R.P.R (2d) 106 (Ont. Gen. Div.), it was held that sale of the property by the landlord does not satisfy the duty to mitigate as it ends the landlord's ability to re-rent the demised premises.

As the landlords listed the property for sale in August 2019 I therefore likewise conclude that they have not met her statutory obligation to mitigate their damages. As such, the landlords' claim for rent for October and November 2019 does not succeed.

### **Decision**

43. The landlords' claim for compensation for damages succeeds in the amount of \$3492.50, determined as follows:

• Moldings, casings, window ledges .....	\$1761.83
• Painting .....	\$500.00
• Replace downstairs door .....	\$77.60
• Bathroom light .....	\$144.99
• Utility basket for dishwasher .....	\$22.08
• Lawn care .....	\$511.00
• Cleaning .....	\$475.00
Total.....	<u>\$3492.50</u>

### **Issue 2: Hearing Expenses**

44. The landlords submitted a receipt showing that they had paid \$20.00 to file this application and 3 other receipts showing that they had spent \$101.12 to print pictures and documents for the hearing. As the landlords' claim has been successful, the tenants shall pay these hearing expenses.

### **Decision**

45. The landlord's claim for hearing expenses succeeds in the amount of \$121.12.

### **Issue 3: Security Deposit**

46. The tenants paid a security deposit of \$900.00 on 21 November 2017 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlords' claim has been successful, they shall retain the security deposit as outlined in this decision and attached order.

## Summary of Decision

47. The landlords are entitled to the following:

a) Compensation for Damages ..... \$3492.50  
b) Hearing Expenses ..... \$121.12

c) LESS: Security Deposit ..... (\$900.00)

Total Owing to Landlords ..... \$2713.62

25 May 2020

\_\_\_\_\_  
Date

\_\_\_\_\_  
[Redacted]  
John R. Cook  
Residential Tenancies Tribunal