

Residential Tenancies Tribunal

Decision 19-0944-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 12 February 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$913.89;
 - An order for a payment of rent in the amount of \$700.00;
 - An order for a payment of late fees in the amount of \$46.00; 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 section 15 of the *Residential Tenancies Act, 2018*, policy 9-3: Claims for Damage to Rental Premises and Donald H. L. Lamont, Residential Tenancies, 6th edition (Carswell: Scarborough, ON, 2000)

Preliminary Matters

6. The landlord amended her application at the hearing and stated that she was no longer seeking an order for a payment of rent.

Issue 1: Compensation for Damages - \$913.89

Relevant Submissions

The Landlord's Position

7. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 August 2018 and a copy of the executed lease was submitted with her application (■ #1). The agreed rent was set at \$700.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$525.00.
8. In October 2019 the tenant informed the landlord that he was terminating the lease, effective 30 November 2019, and he vacated on that date.
9. The landlord stated that after the tenant moved out of the unit she discovered that he had caused some damages to the property and she submitted the following breakdown of the costs to carry out repairs (■ #3):
 - Cleaning \$150.00
 - Painting \$236.26
 - 3 light fixtures \$125.43
 - Plaster \$28.60
 - Plaster holes and nail holes \$345.00
 - Total \$885.29

Cleaning

10. The landlord stated that the tenant had not adequately cleaned the apartment after he moved out and she had to hire a cleaner at a cost of \$150.00. No receipt or invoice was submitted at the hearing.
11. The landlord stated that the area under the refrigerator and stove was dirty after the tenant vacated and she also stated that the oven and stovetop were dirty. She also complained that the tenant had not cleaned the bathroom. The landlord submitted a CD-ROM at the hearing, but it contained no photographs.

Painting

12. The landlord stated that after the tenant moved out, she discovered that there were black marks on the wall next to the sink in the kitchen and similar marks on a wall in the living room. No photographs were submitted at the hearing.
13. The landlord stated that she had to repaint these walls and she submitted an invoice at the hearing (■ #5) showing that she had paid \$460.00 to have that work carried out. The landlord stated that these walls were last painted in 2015.

3 Light Fixtures

14. The landlord stated that she had to replace the globes of 2 light fixtures, one in the kitchen and 1 in the living room, as they were missing after the tenant vacated. She testified that these globes were approximately 5 years old.
15. She submitted a receipt at the hearing (■ #6) showing that she was charged \$91.98 to purchase 2 new light fixtures and an invoice (■ #8) showing that she was charged \$115.00 to have an electrician install 4 light fixtures and to repair a bathroom receptacle. Regarding the electrician's invoice, the landlord stated that the tenant is only responsible for \$67.00 of the invoiced amount.

Plastering

16. The landlord also stated that she was required to plaster nail holes through out the unit after the tenant moved out. No photographs were submitted at the hearing.
17. The landlord submitted a receipt (■ #9) showing that she had purchased plaster at a cost of \$57.20, half of which, she stated, was for this rental unit, and an invoice (■ #4) showing that she was charged \$345.00 to have this plastering carried out.

The Tenant's Position

Cleaning

18. The tenant testified that the unit had been cleaned before he vacated, though he did acknowledge that he had overlooked the area under the stove and refrigerator and that was pointed out to him during the outgoing walkthrough.

Painting

19. The tenant acknowledged that there were marks on these walls which he claimed were caused by his daughter using a permanent marker.

3 Light Fixtures

20. The tenant acknowledged that he had broken the globe in the kitchen. He stated that his child had knocked it with a broom. Regarding the globe in the living room, the tenant stated that it was missing when he moved in.

Plastering

21. The tenant acknowledged that he had put some nails in the walls to hang pictures. He claimed that he was informed by the landlord during their outgoing walkthrough that he would not have to worry about that damage as these walls would be repainted anyhow.

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. The landlord presented no evidence at the hearing to show that the unit required cleaning. No photographs were presented at the hearing, and although the landlord had presented an outgoing condition report (█ #2), it was not signed off by the tenant. I find that the landlord is entitled to compensation for 1 hour of her labour to clean the area under the refrigerator and stove, which the tenant acknowledges he had overlooked. Policy with this Section is that an applicant may claim \$19.40 for 1 hour of their personal labour.
24. With respect to the painting, the tenant acknowledged that he had caused this damage and I therefore agree with the landlord that the tenant is responsible for the costs of repainting those 2 walls. It is expected that a landlord would repaint walls in a rental unit every 3 to 5 years as a result of normal wear and tear and as these walls were last painted in 2015, the paintjob only had 1 year left in its lifespan. Accordingly, the landlord is entitled to a depreciated award of \$92.00 ($\$460.00 \div 5 \text{ years} \times 1 \text{ year remaining in lifespan}$).
25. Regarding the light fixtures, as the tenant admits that he had broken the globe in the kitchen, I find that he is responsible for the costs of having it replaced. A light fixture has an expected lifespan of 12 years and there were another 7 years remaining in the kitchen fixture's life expectancy. I find the landlord is therefore entitled to an award of \$40.24 ($(\$91.98 \div 2 \times 7/12) + (\$115.00 \div 5 \times 7/12)$).
26. With respect to the plastering, I find that the landlord has no claim here as this damage ought to be chalked up to normal wear and tear. As Donald Lamont states in Residential Tenancies "... there is the common law implied covenant to use the premises in a proper and tenant-like manner" which means "that the tenant will use the premises as if they were his own, and therefore he should not do or omit doing anything whereby damage is caused" and he goes on to cite *Barron v. Bernard* (1972), 17 O.R. (2d) 118 (Ont. Dist. Ct.) in which the judge ruled that "ordinarily a tenant does not have to repair holes in the wall caused by the ordinary use of picture hangers in the ordinary use of the premises" (p.116). That is, hanging pictures on walls in a rental unit is "ordinary use" and the tenant cannot be held liable for repairs. No evidence was submitted by the landlord to establish that the holes in the walls exceeded the standard of normal wear and tear.

Decision

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

- Cleaning\$19.40
- Painting.....\$92.00
- 1 light fixture\$40.24
- Total.....\$151.64

Issue 2: Late Fees - \$46.00

Relevant Submissions

28. The landlord stated that the tenant had not paid his rent for November 2019 until 29 December 2019 and this was acknowledged by the tenant. The landlord has assessed late fees in the amount of \$46.00.

Analysis

29. Section 15.(1) of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

30. The minister has set the following fees:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

Decision

31. As the tenant has been in arrears since 02 November 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

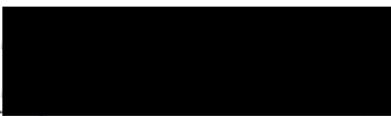
Issue 3: Security Deposit

32. The tenant paid a security deposit of \$525.00 on 28 July 2018 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been partly successful, the security deposit is to be disposed of as follows:

a) Security Deposit \$525.00
b) LESS: Compensation for Damages..... (\$151.64)
c) LESS: Late Fees (\$75.00)
d) Total Owing to Tenant \$298.36

07 May 2020

Date



John R. Cook
Residential Tenancies Tribunal