

Residential Tenancies Tribunal

[REDACTED] Decision 19-0945-05
[REDACTED]

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:25 am on 11 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 tenant", was represented at the hearing by [REDACTED] ("[REDACTED]"). 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 \$400.00.
4. The landlord is seeking an order for compensation for damages in the amount of \$410.00, a payment of rent in the amount of \$800.00 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: Rent - \$800.00

Relevant Submissions

The Landlord's Position

7. The landlord and tenant entered into a monthly rental agreement on 01 September 2019. The agreed rent was set at \$800.00 per month and the tenant paid a security deposit of \$400.00.
8. The landlord testified that there was an incident at the rental unit on 29 November 2019, while the tenant was away from the property. A person came to the tenant's door, was banging on the door and demanded that the tenant come out or he would "burn him in his bed". The landlord stated that the police were called and a report was filed.
9. On the following day, the tenant's sister and friends informed the landlord that he would be moving out and he vacated on that day.
10. The landlord testified that the tenant's rent was paid and up-to-date for the period ending 30 November 2019. She is seeking rent for December 2019 as the tenant had not given her notice that he was vacating the unit until 30 November 2019.
11. The landlord stated that the unit has sat vacant since the tenant moved out and she claimed that she is not going to rent that apartment out of fears that she will run into more issues like the one that happened on 29 November 2019. She also stated that she has not carried out any advertising.

The Tenant's Position

12. █ testified that, on 30 November 2019, the landlord told the tenant that she wanted to him to move out of the apartment by the end of the day. That testimony was conceded by the landlord.
13. She claimed that the landlord is not entitled to any rent for December 2019 as the tenant was evicted on 30 November 2019. His rent was paid up to that date.

Analysis

14. As the landlord had instructed the tenant to move on 30 November 2019, I find that she is not entitled to rent for December 2019.
15. I find that the reason why the landlord had suffered a loss of rent for December 2019 was because she had improperly evicted the tenant and because she did not try to put any new tenants in place for that month.

Decision

16. The landlord's claim for a payment of rent does not succeed.

Issue 2: Compensation for Damages - \$410.00

Relevant Submissions

The Landlord's Position

17. The landlord stated that after the tenant moved out she discovered that the tenant had caused some damages to the walls and she also had to carry out some cleaning. She is seeking \$330.00 in compensation for the costs to repair the walls and \$80.00 for cleaning.

Repair Walls

18. The landlord stated that the tenant had hung a string of lights on the walls using Command strips. When the tenant removed those strips, he did not peel them off in the correct manner and the paint from the walls peeled off in several places. The landlord submitted 3 photographs showing that damage (█ ##5-7).
19. The landlord also complained that the tenant had pushed a door knob through a wall and she submitted a photograph showing that damage (█ #4) and she submitted other photographs showing various holes in the walls after the tenant had removed a floating shelf he had installed (█ #2, #3).
20. The landlord testified that the walls were painted in July 2019 and were in good condition when the tenant moved in.
21. She submitted a receipt at the hearing showing that she was charged \$300.00 to have that damage repaired (█ #8). She also stated that she had used half of a gallon of paint that she had on hand to repaint the damaged areas. That paint was purchased in the summer of 2019 and she submitted a receipt (█ #9) showing that she had paid \$56.06 for a whole gallon at that time. She is seeking \$30.00 for the paint that was used after the tenant moved out.

Cleaning

22. The landlord also stated that she had to have the rental unit cleaned after the tenant moved out. She stated that it took 4 hours to clean the unit and she submitted a copy of a receipt showing that she had paid \$80.00 to have that work carried out (█ #12).

23. The landlord testified that the oven had not been cleaned before the tenant vacated and she submitted 2 photographs showing the dirt on the oven door ([REDACTED] #10, #11). She also stated that the floors had to be swept and washed and the bathroom needed cleaning. She also claimed that the cupboards had to be cleaned out and she stated that the tenant had left food in the refrigerator.

The Tenant's Position

Repair Walls

24. [REDACTED] acknowledged that the tenant had hung lights at the unit but offered no testimony on the landlord's submissions.

Cleaning

25. Regarding the cleaning, [REDACTED] stated that under the circumstances, given that the tenant was evicted and moved in 1 day, she thought that the unit was left in good shape. She stated that there was no garbage left behind and she argued that the landlord would have to clean anyhow before she put a new tenant in place.

Analysis

26. 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

27. I accept the testimony and evidence of the landlord in this matter and I find that the tenant had indeed caused damage to the walls in the rental unit and that he had not adequately cleaned before he vacated. I also accept the landlord's evidence concerning the costs she is seeking here and I find that the tenant owes her \$410.00 (\$300.00 + \$30.00 + \$80.00).

Decision

28. The landlord's claim for compensation for damages succeeds in the amount of \$410.00.

Issue 3: Hearing Expenses

29. The landlord submitted a hearing expense claim form and a receipt showing that she had paid \$20.00 to file this application, a receipt for \$16.56 to have photographs developed, and receipts totalling \$33.10 for the costs of attempting to serve the tenant by Xpresspost. As the landlord's claim has been successful, the tenant shall pay these expenses.

Decision

30. The landlord's claim for hearing expenses succeeds in the amount of \$69.66.

Issue 4: Security Deposit

31. There is no dispute that the tenant had paid a security deposit of \$400.00 on 04 September 2019. As the landlord's claim for compensation for damages has

been successful, she shall retain the security deposit as outlined in this decision and attached order.

Summary of Decision

32. The landlord is entitled to the following:

- a) Compensation for Damages \$410.00
- b) Hearing Expenses \$69.66
- c) **LESS: Security Deposit..... (\$400.00)**
- d) Total Owing to Landlord **\$79.66**

07 May 2020

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal