

Residential Tenancies Tribunal

[REDACTED] Decision 20-0005-05
[REDACTED]

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:15 pm on 03 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 "tenant1" and "tenant2", respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the landlord", also participated.

Issues before the Tribunal

3. The tenants are seeking an order for a refund of the security deposit in the amount of \$450.00.
4. The landlord is seeking an order for compensation for damages in the amount of \$200.00 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: Compensation for Damages - \$200.00

Relevant Submissions

The Landlord's Position

7. The landlord and tenants entered into a monthly rental agreement on 01 July 2019. The agreed rent was set at \$1500.00 per month and the tenants paid a security deposit of \$450.00.
8. The tenancy ended on 31 August 2019. There was no walkthrough when the tenants vacated and there is no report of an incoming or outgoing inspection.
9. The landlord stated that the tenants had not adequately cleaned the rental unit before they vacated and he was required to hire a professional cleaner to clean the apartment. He submitted a copy of a receipt from that cleaner (■ #1) showing that he was charged \$200.00 for 10 hours of her labour. He also submitted an itemized breakdown from her (■ #2) detailing the cleaning she had completed.
10. The landlord also submitted 7 photographs (■ #3) showing the inside of the microwave, the inside of the oven, the stovetop and the bottom of the bathtub and he pointed out the dirt that can be seen in each of these photographs.
11. The landlord is seeking \$200.00 in compensation for the costs of having to hire a cleaner.

The Tenant's Position

12. Tenant1 stated that they did not use the oven during their tenancy and he claimed that it was in the same condition when they vacated as it was when they moved in. He also stated that the bathtub already had the stains seen in the landlord's photograph when he moved in. He did acknowledge, however, that he had forgotten to clean the microwave before he vacated.
13. Tenant2 testified that the unit was in better shape when they vacated than it was when they moved in. She claimed that when the tenancy began she had to purchase cleaning supplies to clean the refrigerator and she had to dispose of food that was left in the pantry. She also complained that there was a significant amount of cat hair all throughout the unit. Tenant1 claimed that there was a strong, pungent odour of cat urine in the basement as well.

Analysis

14. 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*

15. The landlord's evidence shows that the oven, microwave and bathtub were dirty when the tenancy ended and I accept his claim that he had paid \$200.00 to have the unit professionally cleaned.
16. However, I find that the landlord had not established that the tenants are responsible for these costs. There was no photographic evidence submitted by the landlord to corroborate the bulk of the items listed on the cleaner's breakdown and there was no incoming condition report to establish that the stove

and tub were clean when the tenants moved in. It was the tenants' testimony that the unit needed cleaning when they moved in.

17. The tenants acknowledged that they had overlooked the microwave when they were cleaning and I therefore find that the landlord is entitled to \$10.00 in compensation for 30 minutes of labour to clean it out.

Decision

18. The landlord's claim for compensation for damages succeeds in the amount of \$10.00.

Issue 2: Security Deposit

19. The tenants paid a security deposit of \$450.00 on 29 June 2019. As the landlord's claim for compensation for damages has been partially successful, he shall retain \$10.00 of that deposit and return the remainder to the tenants, as follows:
 - a) Security Deposit.....\$450.00
 - b) LESS: Compensation for Damages (\$10.00)
 - c) Total Owing to Tenants\$440.00

05 May 2020

Date


John R. Cook
Residential Tenancies Tribunal