

## Residential Tenancies Tribunal

[REDACTED] Decision 20-0027-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 11:15 am on 26 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 respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", did not participate.

### Issues before the Tribunal

3. The landlord is seeking the following:
  - An order for compensation for damages in the amount of \$1250.00,
  - An order for a payment of rent in the amount of \$1550.00; and
  - Authorization to retain the security deposit of \$775.00.

### 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 19 of the *Residential Tenancies Act, 2018*, policy 9-3: Claims for Damage to Rental Premises and rule 29 of the *Rules of the Supreme Court, 1986*.

### 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 landlord submitted an affidavit with his application stating that he had served the tenants with notice of the hearing, by e-mail, on 13 February 2020. Copies of those e-mails were submitted with the landlord's application and he pointed out that the tenants had provided him with those e-mails addresses on the submitted rental application. 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 - \$1250.00**

#### **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 01 November 2019 and a copy of the executed lease was submitted with his application (█ #1). The agreed rent was set at \$1550.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$775.00.
8. The tenants fell into rental arrears in January 2020 and on 15 January 2020 the landlord issued them a termination notice. A copy of that notice was submitted with his application (█ #2). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 26 January 2019. The tenants vacated on 28 January 2019.
9. The landlord stated that the tenants had caused some damages to the unit during their tenancy and he submitted an invoice at the hearing showing the costs to carry out the following repairs (█ #3):
  - Cleaning/Garbage Removal..... \$150.00
  - Repair Front Door ..... \$200.00
  - Repair Interior Door ..... \$150.00
  - Replace Hardwood Floor ..... \$750.00
  - Total..... \$1250.00

### Cleaning

10. The landlord stated that after the tenants moved out he was required to clean the apartment. He stated that all the appliances needed to be cleaned and he complained that there was spaghetti sauce on the countertop. He also claimed that some garbage had to be removed.
11. In support of his claim, the landlord submitted 3 photographs. One shows the stovetop, another the inside of the oven and a third shows what the landlord described as garbage. The landlord stated that it took him "a couple of hours" to carry out the cleaning. He is seeking compensation in the amount of \$150.00.

### Repair Front Door

12. The landlord pointed to a picture of the exterior door showing that there were some black marks on it and he claimed that there was also a dent in this door. He suspected that this damage occurred when the tenants were moving or may have been caused by them using de-icer on the door.
13. The landlord is seeking \$200.00 for the costs of replacing or repairing the door. That work has not been carried out, and besides the invoice he had sent to the homeowner, no receipts or quotes were submitted at the hearing. The landlord stated that he did not know how old that door was.

### Repair Interior Door

14. The landlord also submitted a photograph showing an interior door. He pointed out that there is a crack in the door jamb and he surmised that the door had been kicked in, causing that damage.
15. The landlord is seeking \$150.00 for the costs of repairing that door. He stated that he was not sure if that work had yet been carried out and no receipts or quotes were submitted at the hearing. The landlord testified that this door was about 1 year old.

### Replace Hardwood Floor

16. The landlord also pointed to 2 photographs showing that there were scratches on the hardwood floors in the master bedroom. He stated that this damage was likely caused by the tenants' furniture scraping across the floor.
17. The landlord is seeking \$750.00 for the costs of applying an epoxy to the floor to hide the scratches and he stated that it would be too expensive to replace these floors. No quotes or receipts were submitted at the hearing. The landlord claimed that these floors were brand new when the tenants moved in. He also stated that he was not sure if that work had yet been carried out.

## Analysis

18. 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*

19. Regarding the cleaning, I accept the landlord's claim that the unit had not been adequately cleaned after the tenants vacated and the evidence submitted by the landlord shows that the oven and stovetop were dirty. I also accept the landlord's claim that it took him 2 hours to carry out that work. Policy with this Section is that an applicant may claim \$19.40 for each hour of their personal

labour. As such, the landlord's claim for cleaning succeeds in the amount of \$38.80.

20. With respect to the exterior door, the landlord's evidence does show that there are some black marks on the door. However, no evidence was presented to the Board to establish the costs of replacement or repair. As such, that claim does not succeed.
21. For the same reasons, I have to come to the same conclusion about the interior door and the hardwood floors.

### **Decision**

22. The landlord's claim for compensation for damages succeeds in the amount of \$38.80.

### **Issue 2: Rent - \$1550.00**

#### **Relevant Submissions**

23. The landlord testified that the tenants had paid their rent for November and December 2019 as required, albeit belatedly, but he claimed that he received no rent for January 2020.
24. The landlord is seeking an order for a payment of rent for January 2020 in the amount of \$1550.00.

#### **Analysis and Decision**

25. I accept the landlord's claim that the tenants have not paid rent as required and I find that he is entitled to a payment of \$1550.00 for January 2020.

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

26. The landlord stated that the tenant had paid a security deposit of \$775.00 on 13 November 2019 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and order.

### **Issue 4: Hearing Expenses**

27. As the landlord's claim has been successful, the landlord shall pay his hearing expense of \$20.00 for the costs of filing this application.

## Summary of Decision

28. The landlord is entitled to the following:

- a) Compensation for Damages ..... \$38.80
- b) Rent ..... \$1550.00
- c) Hearing Expenses ..... \$20.00
- d) LESS: Security Deposit ..... (\$775.00)
- e) Total Owing to Landlord ..... \$833.80

29 May 2020

Date

  
John R. Cook  
Residential Tenancies Tribunal