

Residential Tenancies Tribunal

Decision 20-0225-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 am on 14 August 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. 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 \$9600.00;
 - An order for a payment of rent in the amount of \$3650.00;
 - An order for a payment of late fees in the amount of \$100.00; and
 - Authorization to retain the security deposit of \$650.00.

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 sections 10 and 15 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

6. The landlord amended her application at the hearing and stated that she was now seeking an order for compensation for damages in the amount of \$10,000.00.
7. The landlord called the following witnesses:
 - [REDACTED] ("[REDACTED]") – friend of landlord

Issue 1: Compensation for Damages - \$10,000.00

Relevant Submissions

The Landlord's Position

8. The landlord stated that she had entered into a monthly rental agreement with the tenant in October 2018 and a copy of that executed agreement was submitted with her application. The agreed rent was set at \$1300.00 per month, but the landlord stated that in August 2019 that rent was reduced to \$1200.00. It is also acknowledged in the rental agreement that the tenant had paid a security deposit of \$650.00.
9. On 29 March 2020 the landlord issued the tenant a termination notice and a copy of that notice was submitted with her application. That notice was issued under section 18 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 30 June 2020. The landlord stated that on 24 April 2020 the tenant sent her a text-message informing her that she would be vacating on 01 May 2020. The landlord testified that she moved out on 02 May 2020.
10. After the tenant moved out, the landlord stated that she discovered that a significant amount of damage had been caused to the rented unit and she submitted the following breakdown of the costs to carry out repairs:

- Labour to paint..... \$5600.00
- Material for painting \$650.00
- Replace and install front entrance door \$420.00
- Replace and install rec room flooring..... \$1400.00
- Clean outside garbage..... \$200.00
- Clean inside \$200.00
- Rekey locks \$50.00
- Replace missing curtains \$120.00
- Damage stove top..... \$150.00
- Replace and install new range hood..... \$110.00
- Replace and install bathroom flooring..... \$250.00
- Total..... \$9150.00

Painting

11. The landlord stated that the rental unit was last painted in April 2017.
12. She complained that after the tenant moved out she was required to paint the whole unit as the tenant had been smoking inside, in contravention of the rules set out in her rental agreement. She claimed that there was a very strong smell of cigarette smoke in the apartment after she regained possession of the property and stated that the only way to remove that smell was to wash down all the walls and then have them repainted.
13. The landlord's witness, ■■■■■, corroborated the landlord's claim that there was a smell of smoke in the unit after the tenant had moved out.
14. Besides the issue with the smell of cigarette smoke, the landlord also complained that the tenant had mounted a dart board in the basement and she found numerous holes in that wall caused by errant darts. She also complained that the tenant had put stickers on the walls and ceiling in one of the rooms, causing further damage to the paint job.
15. The landlord stated that she hired a contractor, ■■■■■ (“■■■■■”), to carry out that work and she submitted a copy of a receipt issued to her on 05 June 2020. According to that receipt, it took 300 hours to repaint the unit and she charged \$20.00 per hour for her labour and her staff's labour—a total charge of \$6000.00. She also charged the landlord \$650.00 for painting supplies. No receipts for those supplies were submitted at the hearing.

Front Entrance Door

16. The landlord stated that a front entrance door was installed at the unit in 2017 and that when the tenant moved in there was not a mark on it. She submitted photographs showing the condition of the door after the tenant moved out and pointed out that it was scratched up on the outside.
17. The landlord claimed that the door cannot be repaired and it now needs to be replaced. That work has not yet been carried out, but she submitted an estimate from ■■■■■ in which she writes that a new door would cost \$368.00 and she would charge \$200.00 for the 8 hours it would take her to install it.

Replace and Install Rec Room Flooring

18. The landlord also complained that because of the errant darts in the rec room, there were numerous dart holes in the floor around in the area of the dart board. She submitted photographs with her application showing that damage.
19. The landlord stated that these laminate floors were originally installed in 2014 and that although they had a few small scratches, they were in good condition when the tenant moved in.

20. The landlord stated that because of this damage, she had to replace these floors and she pointed to the invoice she had received from █. According to that invoice, the landlord was charged \$1000.00 for the costs of purchasing new floors and \$400.00 for the 16 hours it took to have them installed. The landlord stated that the rec room had an area of approximately 480 sq ft.

Clean Outside Garbage

21. The landlord complained that after she regained possession of the unit she discovered that the patio and the back yard was covered in dog feces and garbage. The landlord stated that the smell coming of feces coming from the back deck was so bad that she was not able to open the windows in the house.

22. In support of her claim, she pointed to her submitted photographs showing the condition of the deck and the yard after the tenant vacated. The landlord also complained that the tenant had left a fire pit in the back yard.

23. The landlord stated that she had hired █ to clean the yard and the deck and to remove the garbage. According to a second submitted invoice, she was charged \$200.00 to have that work completed.

Interior Cleaning

24. The landlord claimed that because of the smell of the smoke in the property, she had to have all the surfaces cleaned, from the "ceilings to the floors", before she could commence painting. She also claimed that the tenant had spilled something all over the walls and she also found a lot of candle wax that had to be removed.

25. The landlord also complained that the tenant had left an old dryer at the unit and it had to be removed and taken to the dump along with garbage bags and other trash. Her photographs also show that the tenant had left behind items in the refrigerator and in the cupboards.

26. The landlord pointed to the second invoice showing that she was charged \$200.00 to have the unit cleaned on the inside.

Rekey Locks

27. The landlord stated that the tenant never did return the keys for the rental unit to her after she moved out and she therefore had █ bring the locks somewhere to be rekeyed. █'s invoice shows that the landlord was charged \$50.00 to have those locks rekeyed. No receipts were submitted at the hearing.

Replace Curtains

28. The landlord stated that she was required to replace 2 sets of curtains after the tenant moved out, 1 set from a bedroom and 1 set from the rec room. The landlord claimed that one set of these blinds had been burned by cigarettes while the other set was missing. She testified that these curtains were installed in 2017.
29. The landlord stated that ■■■ purchased replacement blinds but they have not yet been installed. No receipts for the purchase of these blinds was submitted at the hearing but the landlord pointed out that ■■■ had charged her \$60 for each set.

Damaged Stovetop

30. The landlord stated that the tenant was provided with a stove that had a ceramic stovetop. She claimed that she found the stovetop to be burnt up and covered with scratches after the tenant vacated. No photographs were submitted with her application.
31. The landlord testified that ■■■ charged her \$150.00 to have that stovetop cleaned. That charge was not included on the 2 invoices from ■■■ submitted by the landlord.

Replace Range Hood

32. The landlord stated that when she regained possession of the rental unit she discovered that the range hood had been removed and placed in her baby-barn. The landlord figured that the tenant must have had something else installed over the stove during her tenancy.
33. The landlord stated that when she removed the range hood from the baby barn, she discovered that there was a dent in front of the range hood and it therefore had to be replaced with a new one. No photographs were submitted with the landlord's application showing the range hood or this dent.
34. According to the invoice from ■■■, the landlord was charged \$110.00 to purchase a new range hood and have it installed. No other receipts were submitted at the hearing. The landlord stated that the damaged range hood was installed in 2014 and was in perfect working condition when the tenancy began.

Replace Bathroom Flooring

35. The landlord stated that she also discovered that there was a tear in the flooring in the bathroom and she submitted a photograph with her application showing that damage. The landlord testified that that floor has subsequently been replaced and she pointed to the invoice from ■■■ showing that she was charged \$250.00 to have new flooring installed.

36. The landlord stated that the floor in the bathroom was a vinyl cushion floor, and it was installed in 2014. She testified that it was in good condition when the tenant moved in and that there were no rips or tears in that floor.

The Tenant's Position

Painting

37. The tenant acknowledged that she was a smoker but she claimed that she had not been smoking in the apartment. She stated that she only smoked outside during the course of her tenancy, even when the weather was poor.
38. The tenant stated that she suspects that the landlord has come to the conclusion that she had been smoking inside because she would bring the canister, in which she had placed her cigarette butts, into the house after she was done. She also argued that the landlord may have formed this mistaken belief because she found a cigarette butt in the sink after she had moved out. But she claimed that just before she moved out she had been cleaning out beer bottles, which had been stored in her shed during her tenancy, and some of them had cigarette butts in them which she then forgot to remove from the sink.
39. The tenant claimed that the paint job at the unit already had defects in it when she moved in and she claimed that she only used already existing nails holes to hang her pictures. She also claimed that there were numerous "screw pops" on the walls throughout the unit. She further stated that the rental unit is an old house and that it was not in "tip top shape" when she moved in.
40. She did acknowledge that she had mounted a TV at the unit and that some plastering and painting would be required to repair that area. She also acknowledged that she had overlooked an area of the wall where one of her children had spilled something on it, but she argued that this could have been easily wiped off and did not need to be repainted.
41. The tenant also argued that the landlord's claim for 300 hours of painting was excessive. Given the timeframe within which the work was carried out, the tenant pointed out that the painters would have been at the unit for 13 hours a day. She claimed that her son works at a store across the street from the rental unit and he informed her that he hardly saw anyone at the property in the timeframe identified by the landlord.
42. The tenant also claimed that after she had moved out, the landlord had put the house up for sale and on the landlord's realtor's page, which contains photographs showing the condition of the property, she claimed that in some of the photographs, in particular a bedroom and the bathroom, the walls are the same colour as when she vacated.

Front Entrance Door

43. The tenant claimed that the door was already damaged when she moved into the rented premises. She claimed that she was in a hurry when she did the initial walkthrough with the landlord and she did not notice the damage on that day. She claimed that she first noticed the damage to the door on 31 October, just a couple of weeks after she moved into the property.
44. The tenant stated that she was informed by the landlord's neighbours that the landlord had previously rented the unit to several "troublemakers" and she figured that this damage was caused during that tenancy.

Replace and Install Rec Room Flooring

45. The tenant claimed that there were already scratches on the floor when she moved in and she also claimed that the floors were buckling.
46. She did acknowledge, however, that even though she had laid down some mats on the floors underneath the dart board, there were nevertheless some marks caused to the floors as a result of the darts.
47. But the tenant argued that all of the floors did not need to be replaced and that the landlord could have easily repaired the affected sections at a much lower cost. She also pointed out that her husband was a contractor and he could have repaired these floors at no cost.
48. In addition, the tenant pointed out that on the landlord's realtor's page, the photographs show that the rec room had not been replaced.

Clean Outside Garbage

49. The tenant claimed that she was usually diligent in cleaning up after her pets, but she claimed that because of "snowmaggedon", a storm which hit the province on 17 January 2020, a lot of the dog feces was buried in snow, and remained buried when she vacated. She also claimed that her fire pit was buried in snow when she vacated and could not be removed.
50. The tenant argued that she ought not to be charged \$200.00 to have the deck and yard cleaned up as she could have done it for free.

Interior Cleaning

51. The tenant argued that had she been given enough time, she would have had the unit cleaned and that it would have cost the landlord nothing.
52. She acknowledged that she had left behind a dryer at the property, but she pointed out that, because of the lockdowns resulting from the COVID-19

pandemic, bulk garbage collection had ceased and there was no way she was able to get the dryer to the dump.

53. Regarding the rest of the cleaning, the tenant claimed that she may have left behind a bottle of coke or a packet of cigarettes, but not so much garbage that it would require any significant amount of cleaning.

Rekey locks

54. The tenant stated that the landlord never gave her an opportunity to return the keys to her.

Replace Curtains

55. The tenant stated that she used her own window coverings when she resided at the property and she claimed that the set of curtains that the landlord claims are missing were, in fact, left on the top shelf in a closet.
56. Regarding the burn marks in the other set of curtains, the tenant stated that those burn marks were not caused by cigarettes but rather by a candle.

Damaged Stovetop

57. The tenant claimed that there were already scratches on the stovetop when she moved into the unit. She acknowledged that there may have been a boil-over when she was cooking jigg's dinner, which in turn may have caused some burn marks. But she claimed that these sorts of spills were very easy to clean and she chalked it up to normal wear and tear.

Replace Range Hood

58. The tenant stated that the microwave that was supplied to her when she moved into the rental unit was not working and she had requested the landlord's permission to install a new microwave/range hood over the stove. She stated that the landlord had agreed and she therefore removed the old range hood and placed it in the baby-barn.
59. The tenant stated that there was no damage caused to the range hood during her tenancy.

Replace Bathroom Flooring

60. The tenant claimed that the rip in the flooring in the bathroom was there when he moved into the unit, even though she never noticed it during the initial walkthrough.
61. She claimed that shortly after she had taken possession of the property she was mopping that floor and the wet mop caused the tape, which had been covering

the rip, to peel away. The tenant claimed that was when she discovered the pre-existing damage.

62. The tenant also claimed the landlord's realtor's photographs of the bathroom show that the floor had not been replaced. In response, the landlord conceded that the bathroom floor, along with the exterior door, had not yet been replaced.

Analysis

63. 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

64. Before I address the issue of the damages, I will make a couple of points about the landlord's evidence in support of the costs she is seeking here.
65. The landlord testified that [REDACTED] carried out the repairs at the rental unit and that [REDACTED], who supplied the invoices and quotes, is an employee of that company. Those documents contain no letter head, they do not indicate the name or address of the company, there is no disclosure of a business number or HST number, and there is no signature on those documents. On inspection of the Document Properties of the submitted .pdf files (Repair Receipt (005).pdf, Cleaning Garbage Removal (004).pdf and Front Door Replacement (002).pdf), "[REDACTED]" is listed as the author of those documents.
66. Besides those 3 .pdf files, no other evidence was submitted at the hearing to establish the costs of the materials purchased by [REDACTED] to carry out the repairs.
67. According to Companies and Deeds Online (CADO), [REDACTED] is indeed a registered company, operating out of [REDACTED], as the landlord had stated at the hearing. CADO also indicates that [REDACTED] (along with [REDACTED] [REDACTED]) is a director of that company. But the landlord's witness, [REDACTED], denied that she was a director of that company and denied that she had any affiliation with [REDACTED].
68. I also note that the landlord claimed that she had been charged \$150.00 for the costs of cleaning the range hood, though that item is not included on the submitted invoices. Also, the invoice shows that the landlord was charged \$250.00 to have the bathroom floor replaced. At the end of the hearing, after the tenant pointed out that the old floor is still visible in her realtor's photographs, the landlord testified that the bathroom floor has not yet been replaced and that she is still in the process of carrying out repairs at the property. I find it odd that the landlord would be charged \$250.00, on 05 June 2020, to have a floor replaced, when that work had not even been carried out.
69. Let's turn to the alleged damages and the remainder of the landlord's evidence in support of her claim.
70. Regarding the painting, the landlord claimed that the whole unit had to be repainted after the tenant vacated, mostly because she had been smoking in the unit. But I find that there was insufficient evidence presented at the hearing establish, on the balance of probabilities, that the tenant had been smoking inside. There had been no inspections carried out at the property during the tenancy and there was no report of an outgoing inspection when the tenancy ended.

71. I'll make a couple more points about the painting, though. I agree with the tenant that a claim for 300 hours to paint a rental property is excessive. Even if it takes 10 hours to paint 1 room, which I believe is extreme, especially for a professional, the landlord could have had 30 rooms painted for the hours she is claiming here.
72. Another point: a paintjob at a rental property deteriorates over time and it is expected that a landlord would have to repaint every 3 to 5 years. Given that this unit was last painted 3 years ago, it soon would have had to have been repainted, at the landlord's own costs.
73. I accept the landlord's claim, though, that there was some damage caused to the walls from the darts and the decals and I find that she is entitled to some compensation for that damage. I award the landlord \$400.00.
74. With respect to the front entrance door, I find that the landlord failed to establish this damage occurred during this tenancy. There was no report of an outgoing inspection and on the ingoing inspection, there is no code indicating whether the door is damaged ("D") or in good condition ("G"). I am also not persuaded that it would take a professional contractor 8 hours to hang 1 door.
75. With respect to the rec room floors, I accept the landlord's evidence which shows that some darts had punctured some of the laminate floor boards. I was not convinced, however, that all the flooring in the whole rec room needed to be replaced. And as I indicated in paragraphs 65 – 68, above, I was not persuaded that the landlord had established that it would cost \$1400.00 to repair or replace the floors. Furthermore, laminate floors have an expected lifespan of 10 years, and these floors were already 6 years old when the tenancy ended. With these points in mind, I find that the landlord is entitled to an award of \$200.00 to repair these floors.
76. Regarding the interior and exterior cleaning, I accept the landlord's evidence which shows that both the interior and the exterior of the property had not been adequately cleaned and I find that she is entitled to the \$400.00 she is claiming here.
77. With respect to the costs of rekeying the locks, that claim does not succeed. Policy with this Section is that it is expected that a landlord would change or rekey the locks at a rental unit after every tenancy ends for the safety and security of any new tenants who are taking up residence at the property.
78. The tenant acknowledged that she was responsible for the burn marks in 1 set of curtains. I find that a depreciated award of \$30.00 is reasonable for the replacement costs of 1 set of curtains.
79. No evidence was submitted by the landlord to show that she had incurred any additional cleaning costs to have the stovetop cleaned. Therefore, her claim for cleaning does not extend past the \$400.00 awarded in paragraph 76, above.

80. I also find that the landlord has failed to establish that there was any damage caused to the range hood or to establish that any damage was caused during this tenancy.
81. Finally, and despite the landlord's submission from █ showing that she was charged to have her bathroom floor replaced, the landlord conceded that that work has not been carried out. Therefore, that claim also fails

Decision

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

• Painting.....	\$400.00
• Rec Room Floors.....	\$200.00
• Cleaning	\$400.00
• Replace 1 Set of Curtains.....	\$30.00
• Total.....	<u>\$1030.00</u>

Issue 2: Rent - \$3650.00

Relevant Submissions

The Landlord's Position

83. The landlord submitted rent records with her application showing the payment she had received from the tenant since the tenancy began.
84. According to these records, the tenant still owes \$50.00 for the month of February 2020 and they also show that no rent was paid for March or April 2020.
85. The landlord also complained that the tenant only notified her on 24 April 2020 that she was terminating her tenancy and she did not regain possession of the property until 02 May 2020. The landlord argued that as she had not received a full, 1 month's notice she is therefore entitled to rent for May 2020 as well.
86. The landlord is seeking an order for a payment of rent in the amount of \$3650.00 (\$50.00 + \$3600.00 (3 months x \$1200.00 per month)).

The Tenant's Position

87. The tenant acknowledged that she had not paid rent for the months cited by the landlord.
88. She claimed that the reason she had not paid rent during this time was because her family had run into some financial hardships. She claimed that her husband

had lost his job and there were delays in processing his unemployment benefits. She claimed that she was also receiving unemployment assistance during this period. On top of these financial issues, she claimed that her child is suffering some medical issues and all of this was compounded by the fact that she was coping with the stresses of the COVID-19 pandemic.

Analysis

89. There is no dispute that the tenant owed \$2450.00 (\$50.00 + \$1200.00 + \$1200.00) for the rental period ending 30 April 2020.
90. With respect to rent for May 2020, I also agreed with the landlord that as the tenant had only provided her with a week's notice that she was vacating, coupled with the fact that the landlord had to carry out some cleaning and repairs at the unit, it would have been virtually impossible for her to find new tenants for April 2020.
91. As such, the landlord's claim for a payment of rent succeeds in the amount of \$3650.00 for the period ending 30 April 2020.

Decision

92. The landlord's claim for a payment of rent succeeds in the amount of \$3650.00.

Issue 3: Late Fees - \$100.00

Relevant Submissions

93. The landlord has assessed late fees in the amount of \$100.00.

Analysis

94. 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.

95. 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.

96. As the tenant has been in arrears since 01 February 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

97. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 4: Security Deposit

98. The landlord stated that the tenant had paid a security deposit of \$650.00, on 29 September and 16 October 2018, and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and order.

Issue 5: Hearing Expenses

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

Summary of Decision

100. The landlord is entitled to a payment of \$4125.00 determined as follows:

a) Compensation for Damages.....	\$1030.00
b) Rent.....	\$3650.00
c) Late Fees	\$75.00
d) Hearing Expenses	\$20.00
 e) LESS: Security Deposit (\$650.00)	
f) Total Owing to Landlord	<u>\$4125.00</u>

15 October 2020

Date

John R. Cook
Residential Tenancies Tribunal