

## Residential Tenancies Tribunal

Decision 19-007-02

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 11:20 am on 23 April 2019 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", did not participate.

### Issues before the Tribunal

3. The landlord is seeking the following:
  - An order for compensation for damages in the amount of \$6336.65
  - An order for compensation for cleaning costs in the amount of \$2584.02;
  - An order for a payment of rent in the amount of \$7150.00;
  - An order for a payment of utilities in the amount of \$179.00; and
  - Authorization to retain the security deposit of \$475.00.

### 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 policy 9-3: Claims for Damage to Rental Premises.

### Preliminary Matters

6. The tenant was not present or represented at the hearing. 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 respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. With his application the landlord had submitted an affidavit stating that he had served the tenant with notice of this hearing, by e-mail, on 26 March 2019 and she has had 27 days to provide a response. The landlord also submitted a copy of the e-mail he had sent to the tenant as well as previous e-mail correspondence he had had with her at that e-mail address. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

7. The landlord amended his application at the hearing and stated that he was now seeking an additional \$1379.41 in compensation for damages bringing that portion of his claim to \$7716.06.

### **Issue 1: Cleaning - \$2584.02**

#### **Relevant Submissions**

##### The Landlord's Position

8. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant on 01 September 2017 and a copy of the executed lease was submitted at the hearing (JC #1). The agreed rent was set at \$950.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$475.00.
9. The landlord stated that he sent an e-mail to the tenant on 26 August 2018 giving her notice that he would be entering the rented premises and he entered on 28 August 2018. He testified that he found the unit abandoned on that date.
10. The landlord stated that the unit was in very poor condition and the whole apartment had to be cleaned. He stated that all the floors had to be swept and mopped and he complained that there was a dirty film over all the walls that had to be washed off before he could begin the painting.
11. He also stated that the tenant had left behind a significant amount of garbage and discarded personal items which also had to be removed. And besides this garbage, the landlord claimed that he had to remove almost all of the furniture he had supplied the tenant with as it had either been damaged or soiled.
12. The landlord submitted photographs at the hearing showing the condition of the unit after he regained possession of the property and they do show that there was garbage left behind in just about all of the rooms in the unit and there is additional garbage and debris in the crawlspace, on the back deck and littered

about the grounds. The photographs also show that some mattresses had been left outside and that other pieces of furniture had been damaged.

13. The landlord stated that he had to make 14 trips to the dump to remove all of the garbage and damaged furniture and, including the cleaning that had to be carried out, he testified that he had spent 72 hours in total cleaning and removing garbage.

### **Analysis**

14. I accept the landlord's evidence which shows that the tenant had left the unit in a very poor state after she had moved out. The landlord's evidence shows that the rented premises had not been cleaned after the tenant vacated and there is a significant amount of garbage left on the premises. I also accept the landlord's evidence showing that the tenant had damaged the furniture she had been provided with and the landlord was also required to spend time removing these items.
15. I note that in the landlord's breakdown of the hours he had spent at the unit cleaning and removing garbage, he also included the time it had taken him, and those who helped him, to drive to and from [REDACTED], the location of the rental unit, from [REDACTED]. That is a distance of approximately 150 km and ought to take about 1.5 hours to drive one way. With respect to that portion of the landlord's claim, I am not persuaded that the tenant can be held liable for the costs the landlord is claiming here as it was his decision to live so far away from his place of business.
16. Discounting that portion of his claim and based on the evidence submitted, I find that the landlord is entitled to compensation for 40 hours of his time to clean the unit and to remove the garbage and damaged furniture. Policy with this Section is that a landlord may claim \$19.40 per hour in compensation for their personal labour.

### **Decision**

17. The landlord's claim for the costs of cleaning and garbage removal succeeds in the amount of \$776.00.

### **Issue 2: Compensation for damages - \$7716.06**

#### **Relevant Submissions**

##### **The Landlord's Position**

18. With his application, the landlord submitted a breakdown of the repairs he had to carry out after the tenant moved out (JC #2) as well as a list of the items that he

had to replace at the unit as they were either damaged or stolen. As best as I can make out, the landlord is seeking the following:

• Replace exterior door .....	\$460.44
• Miscellaneous repairs.....	\$31.59
• Hire painters .....	\$3000.00
• Replace stolen/damaged furniture.....	\$2800.00
• Labour .....	\$1216.00
Total Owing to Landlord .....	<u>\$7508.03</u>

#### Exterior Door and Miscellaneous Repairs

19. The landlord submitted a photograph at the hearing showing the main door to the rental unit and he pointed out that both the door and the door frame were split. He stated that this damage was caused by the tenant kicking the door in.
20. The landlord stated that he had to replace that door and he submitted a receipt at the hearing (JC #3) showing that he paid \$460.44 for a replacement door. He also testified that it took 24 hours to install that door. The landlord also submitted a receipt for \$31.59 for other materials (pine, tape and siding) that were associated with the replacement of the door.
21. The landlord testified that the door was approximately 6 years of age when the tenancy began and he described its condition as "like new".

#### Painting

22. The landlord stated that the whole house had to be repainted after the tenant moved out and he submitted an invoice at the hearing showing that he was charged \$3000.00 to have that work completed.
23. The landlord submitted photographs at the hearing showing the condition of the walls after he regained possession of the unit. He pointed out that there were 5 or 6 large holes in the walls that needed to be repaired, plastered and repainted. In one of the bedrooms, the tenant had hand-painted the alphabet all over the walls and that room also required repainting. The landlord also complained that the tenant had repainted the master bedroom but she had done such a poor job that this room also needed to be repainted.
24. The landlord also stated that there were crayon and pen marks over all the walls throughout the unit and he also complained that there was a filth over all the walls that he was unable to clean.
25. He testified that the unit was newly constructed 6 years ago and the walls were last painted at that time.

### Stolen and Damaged Furniture

26. According to the submitted rental agreement (JC #1), the tenant was supplied with "beds in each bedroom with dresser, couch, 50" TV, arm chair, table with fold up chairs". He also stated that the tenant was given a deep-freeze freezer as well as a microwave.
27. When the landlord regained possession of the property, he claimed that the TV, freezer and microwave were missing. He also complained that he had supplied the tenant with cable receivers and these were also missing.
28. With respect to the TV and the freezer, the landlord has not yet replaced these items but he is seeking \$800.00 for the costs to replace the TV and \$250.00 for the cost to replace the freezer. No receipts or quotes were submitted at the hearing. The landlord stated that the TV was 6 years old but he did not know how old the freezer was.
29. Regarding the microwave, the landlord stated that this item has been replaced and he submitted a receipt (JC #6) showing that he had paid \$91.99 for a new one. He stated that the missing microwave was 6 years old. The landlord also submitted a bill from Eastlink showing that he has been charged \$100.00 for the missing cable receivers.
30. The landlord stated that besides the missing furniture, he also had to replace the furniture that had been left behind as it was all badly damaged. He submitted a photograph of the leather couch which was taken just before the tenant moved in (JC #8) and he claimed that this photograph shows that it was in "mint condition". A second photograph was submitted showing that same couch when the tenant moved out and he pointed out that all of the leather had been torn and was peeling off. The landlord stated that this couch was 5 years old and he is seeking \$500.00 for the costs of replacing it. No receipt or quote was submitted at the hearing.
31. Regarding the 3 beds he had supplied to the tenant, he stated that 2 of the bed frames were missing and he found 1 frame outside on the back of the house. He stated that 1 mattress had been thrown outside and was ruined and he stated that the other mattresses and box springs which remained in the house were "filthy" and also had to be disposed of. He submitted an invoice at the hearing JC #12) showing that he paid \$2086.10 to replace those 3 beds.
32. The landlord also stated that he also had to replace 2 dressers and the submitted invoice (JC #12) shows that he had paid \$455.40 for them. No photographs were presented at the hearing showing what damage had been caused to these dressers.

## Analysis

33. 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;*

34. With respect to the front door, I accept the landlord's claim that it had been damaged by the tenant and that it needed to be replaced. The landlord's evidence shows that he paid \$492.03 in materials and he claimed that it took him 24 hours to install, including the time it took to drive to and from [REDACTED] from [REDACTED].

35. Regarding the landlord's claim for labour, I find that an award for 4 hours is more than reasonable and I make no award for the time it took to travel to [REDACTED]. An exterior door has an expected life span of 15 years and given that there were 9 years left in its life expectancy, I find that the landlord is entitled to \$341.82 ( $\$77.60 \times 4 \text{ hours} \times \$19.40 \text{ per hour} + \$492.03 = \$569.63 \div 15 \text{ years} = \$37.98 \text{ per year} \times 9 \text{ years} = \$341.82$ ).

36. With respect to the painting, the landlord's evidence shows that the whole unit needed to be repainted and several walls had to be repaired because of the large holes in the gyproc. It is expected that a landlord would have to repaint a rental unit every 3 to 5 years as a result of normal wear and tear and I find that the landlord would soon have had to repaint the unit anyhow. Nevertheless, as most of the damage was not from the normal use of the walls but rather from deliberate damage, I find that the landlord is entitled to \$1000.00 in compensation.

37. Regarding the furniture, I accept the landlord's evidence which shows that the couch was heavily damaged and that the beds had to be disposed of. I also accept his claim that the freezer, microwave, TV and cable receivers were missing. With respect to the dressers, however, I find that not enough evidence was submitted to justify an award for their replacement.

38. With respect to the beds, and adjusting for depreciation, I find that the landlord is entitled to \$834.44 ( $\$2086.10 \div 10 \text{ years} = \$208.61 \text{ per year} \times 4 \text{ years remaining} = \$834.44$ ). With respect to the microwave, I find that the landlord is entitled to \$36.88 ( $\$91.99 \div 10 \text{ years} = \$9.20 \text{ per year} \times 4 \text{ years} = \$36.88$ ). I also find that he is entitled to the full costs of replacing the cable receivers: \$100.00.

39. With respect to the remaining missing and damaged items (couch, television, table and chairs, deep freeze) the landlord presented no evidence at the hearing to establish the costs that he is seeking for their replacement. I find that he is entitled to a nominal award of \$200.00 for these items.

## **Decision**

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

- Replace exterior door ..... \$341.82
- Painting ..... \$1000.00
- Missing and damaged furniture ..... \$1171.32

Total Owing to Landlord ..... \$2513.14

## **Issue 3: Utilities - \$179.00**

### **Relevant Submissions**

### The Landlord's Position

41. The landlord stated that the cable bill for the rental unit remained in his name during the tenancy and the tenant would pay him an additional \$150.00 per month for that bill.
42. He stated that during the tenancy the tenant had rented several movies and also viewed a pay-per-view sporting event in the last month of her tenancy. The landlord testified that he had tallied up all of these charges and they totalled \$179.00. No bills were submitted at the hearing.

### **Analysis and Decision**

43. As the landlord presented no evidence to establish the costs he is seeking here, I find that his claim does not succeed.

### **Issue 4: Rent - \$7150.00**

#### **Relevant Submissions**

##### The Landlord's Position

44. The landlord stated that the rent was set at \$950.00 and the tenant paid him an extra \$150.00 per month for utilities.
45. The landlord testified that the tenant only paid him half for the rent for June 2018, \$555.00, and he received no rent for the months of July and August 2018. He is seeking a payment of \$2755.00 for those 3 months.
46. The landlord also pointed out that he works in Labrador and he was unable to get the unit ready for re-rent until 4 months after the tenant moved out. He is seeking an additional payment of rent for those 4 months.

#### **Analysis**

47. I accept the landlord's claim that the tenant had not paid her rent for the last 2.5 months of the tenancy and I agree with the landlord that he is entitled to a payment of \$2755.00 for that period.
48. Regarding the additional 4 months rent that the landlord is seeking, I find that he is not entitled to that full amount. In cases where an applicant is making a claim for damages suffered—in this case, a loss of rental income—the applicant has a duty to take all reasonable steps to mitigate those damages.
49. In this case, I was not persuaded that landlord had taken all reasonable steps to have the unit ready for rent in a timely fashion. The tenant cannot be held

responsible for the fact that the landlord lives so far away from his place of business or for the fact that the landlord works in Labrador.

50. I find that the landlord is entitled to an additional 2 month's rent in lieu of receiving a termination notice from the tenant and in compensation for the loss of rental income he suffered while he was carrying out repairs.

### **Decision**

51. The landlord's claim for a payment of rent succeeds in the amount of \$4555.00 (\$2755.00 + 1800.00 (\$900.00 per month x 2 months)).

### **Issue 5: Security Deposit**

52. The landlord stated that the tenant had paid a security deposit of \$475.00 on 01 September 2017 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, he shall retain the security deposit as outlined in this decision and order.

### **Summary of Decision**

53. The landlord is entitled to the following:

- Cleaning ..... \$776.00
- Compensation for damages ..... \$2513.14
- Rent ..... \$4555.00
  
- LESS: Security deposit ..... (\$475.00)

Total Owing to Landlord ..... \$7369.14

11 July 2019

Date

  
John R. Cook

Residential Tenancies Tribunal