

Residential Tenancies Tribunal

[REDACTED] Decision 19-076-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 05 March 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 in the hearing.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$550.00;
 - An order for compensation for cleaning costs in the amount of \$200;
 - An order for a payment of rent in the amount of \$2700;
 - An order for a payment of late fees in the amount of \$75.00;
 - An order for a payment of other expenses totalling \$400.00; and
 - Authorization to retain the security deposit of \$600.00.

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

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her 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) a respondent 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. The landlord submitted an affidavit with his application stating that the tenant was served with notice of the hearing, by text-message, on 07 February 2019. The landlord also submitted a copy of that text-message with his application and at the hearing he submitted copies of the exchanges he had been having with tenant at that cellular number. The tenant has had 25 days to provide a response. 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 seeking an additional \$150.00 in rent for a total claim of \$2850.00.

Issue 1: Other Expenses - \$400.00

Relevant Submissions

8. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant on 09 August 2017 and a copy of the executed lease was submitted at the hearing (JW #1). The agreed rent was set at \$900.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$600.00.
9. The landlord stated that the tenant was supplied with a newly purchased bed when she moved into the unit and he testified that this bed cost him approximately \$400.00. No receipt was submitted at the hearing.
10. The landlord stated that when he regained possession of the property after the tenancy ended he discovered that this bed had been removed by the tenant from the property. He stated that the tenant had acknowledged that her movers had mistakenly removed the bed from the unit and he pointed to an e-mail exchange he had with her (JW #2) to corroborate that claim. The landlord stated that the tenant had promised to return the bed to him but he has had no communication with her since she moved out and she will not respond to his messages.
11. The landlord is seeking compensation in the amount of \$400.00 for this missing bed. The landlord has not replaced this bed and no quote or estimate was submitted at the hearing showing the costs of replacement.

Analysis

12. I accept the landlord's testimony in this matter and his evidence supports his claim the tenant had removed the bed from the rental unit when she vacated at the end of January 2019.
13. The landlord testified that he had purchased the bed at a cost of \$400.00. Given that it was 2 years old when the tenancy ended and that it would have suffered some wear and tear during the course of the tenancy, I find that the landlord is entitled to a depreciated award of \$300.00.

Decision

14. The landlord's claim for "other expenses" succeeds in the amount of \$300.00.

Issue 2: Cleaning - \$200.00

Relevant Submissions

15. The landlord testified that the tenant had not cleaned the unit after she vacated and he was required to hire a professional cleaner to carry out that cleaning. He testified that it took the cleaner 4 hours to clean the unit and he was charged \$200.00 for her labour. No receipt was submitted at the hearing.
16. The landlord stated that the toilet and sink in the bathroom had been left dirty, that there was food left in the refrigerator and it had not been cleaned. He stated that there were stains on the walls and he discovered mildew in some areas. He also claimed that the floors in the apartment had not even been swept.
17. Besides the issue of cleaning, the landlord complained that the tenant had left behind a significant amount of garbage and he was required to make 2 trips to the dump to dispose of that garbage.
18. The landlord is seeking a payment of \$200.00 as reimbursement for the costs he incurred to hire a cleaner.

Analysis

19. The landlord submitted 19 photographs at the hearing showing the condition of the unit after the tenant had vacated (JW ##3-19). Although these photographs do show that there is some damage to walls and trims, etc., I am unable to discern any areas that require cleaning.

20. As no receipt was submitted showing that the landlord had incurred \$200.00 to hire a cleaner and as the photographic evidence does corroborate this portion of his application, I have to conclude that he had not met his burden of establishing, on the balance of probabilities, that cleaning was required or that he is entitled to any compensation.

Decision

21. The landlord's claim for the costs of cleaning does not succeed.

Issue 3: Compensation for damages - \$550.00

Relevant Submissions

22. The landlord stated that after the tenant moved out he discovered that she had caused significant damage to the rental unit. With his application he provided the following breakdown of the costs to carry out repairs (JW #3):

• Damages to window sills	\$100.00
• Damage to flooring	\$100.00
• Plaster and paint	\$150.00
• Broken toilet seat.....	\$30.00
• Missing/broken blinds.....	\$70.00
• Door trims.....	\$100.00
• Total	\$550.00

23. In support of his claim, the landlord submitted photographs at the hearing showing these damaged areas (JW ##3-21). He pointed out that some of the trim work on the window sills and door frames were heavily scratched up and he attributed that damage to the tenant's cat. The photographs also show that the toilet seat is cracked, that a set of blinds are damaged, that there is a scratch in the laminate floor and there are a few nicks and dents in the walls throughout the unit.

24. The landlord stated that no repairs have yet been carried out at the unit.

25. He also claimed that he will be carrying out these repairs himself, but he is not seeking to be compensated for his labour but only for the costs of purchasing the materials to do this work. No receipts or quotes were submitted at the hearing.

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. The evidence submitted by the landlord does establish that there was some damage caused to the rental unit and it seems probable that the tenant was responsible.
28. However, as the landlord is seeking the costs of purchasing the materials to carry out these repairs and as he presented no evidence establishing those costs, I find that his claim does not succeed.

Decision

29. The landlord's claim for compensation for damages does not succeed.

Issue 4: Rent - \$2850.00

Relevant Submissions

30. At the hearing, the landlord submitted copies of 2 INTERAC e-Transfers he had received from the tenant—\$200.00 which was received on 28 November 2018 (JW #22) and \$750.00 received on 11 December 2018 (JW #23). With respect to the payment he received on 28 November 2018, the landlord testified that \$150.00 of that amount was rent for October 2018 and the remaining \$50.00 was for November's rent. To corroborate that claim, the landlord pointed to the text-message exchange he had with the tenant on 28 November 2018 where she acknowledges that \$150.00 of the \$200.00 was for rent for October 2018 (JW #2).
31. The payment of \$750.00, received on 11 December 2018, was also for rent for November 2018 and the landlord stated that he received no other payments from the tenant since.
32. The landlord is seeking a payment for the remaining rent owing for November 2018 and he is also seeking rent for December 2018, January 2019 and February 2019. He calculates that the tenant owes him \$2850.00.

Analysis

33. I accept the landlord's testimony and evidence in this matter and I find that the tenant has not paid rent as required. Based on the evidence submitted at the hearing, I find that the tenant owes \$100.00 for November 2018 (\$900.00 less the \$50.00 remaining from the \$200.00 payment made on 28 November 2018 and less the December 2018 payment of \$750.00).
34. I also accept the landlord's claim that the tenant owes the full rent for December 2018, January 2019 and February 2019—a total of \$2700.00.

Decision

35. The landlord's claim for a payment of rent succeeds in the amount of \$2800.00.

Issue 5: Late fees - \$75.00

Relevant Submissions

The Landlords' Position

36. The landlord has assessed late fees in the amount of \$75.00.

Analysis

37. 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.

38. 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.

Decision

39. As the tenant has been in arrears since 2018, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 6: Security Deposit

40. The landlord stated that the tenant had paid a security deposit of \$600.00 on 09 August 2017 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, he shall retain the security deposit as outlined in this decision and order.

Summary of Decision

41. The landlord is entitled to the following:

a) Other expenses \$300.00
b) Rent \$2800.00
c) Late fees \$75.00

d) LESS: Security deposit..... (\$600.00)

Total Owing to Landlord \$2575.00

09 April 2019

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal