

Residential Tenancies Tribunal

Decision 19-188-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:15 pm on 05 June 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.
3. The tenants, [REDACTED] ([REDACTED]), [REDACTED] ([REDACTED]), [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]), did not participate in the hearing. [REDACTED] ([REDACTED]) participated by telephone.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$19,621.76,
 - An order for compensation for inconvenience in the amount of \$1005.00,
 - An order for a payment of rent in the amount of \$4495.00,
 - An order for a payment of utilities in the amount of \$72.63, and
 - Authorization to retain the security deposit of \$1036.40.

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

Preliminary Matters

7. ■■■, ■■■, ■■■ and ■■■ were not present or represented at the hearing and there was no number where they could be reached by telephone. 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 stated that she had personally served ■■■ on 08 May 2019.
8. The landlord had also applied for substituted service and she was given permission by the Director of Residential Tenancies to serve ■■■, ■■■, ■■■ and ■■■ by giving their claims to ■■■. The landlord stated that she also served the 4 of them on 08 May 2019. In addition, she again served ■■■ by e-mail and ■■■ by text-message and copies of those e-mails and text-messages were submitted at the hearing.
9. The tenants have had 27 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 their absence.

Issue 1: Compensation for Damages - \$19,621.76

Relevant Submissions

The Landlord's Position

10. The landlord stated that she entered into a rental agreement with ■■■, ■■■, ■■■ and ■■■ in September 2018. A written contract was drafted at that time and signed and delivered to the department of Advanced Education, Skills and Labour (AESL). The agreed rent was set at \$1400.00 and AESL was to pay that rent on behalf of each of the tenants in the amount of \$350.00 each.
11. Regarding the rental agreement that the landlord had entered into, she stated that she never did receive a copy of that agreement and she therefore drafted 4 new agreements for the tenants and gave those agreements to the tenants to sign. After she regained possession of the rental unit the landlord found that those agreements had been left behind and were unsigned.
12. 1 month after the tenancy began, ■■■ moved out of the unit and ■■■ took his place, effective 01 November 2018.
13. The landlord stated that she received a termination notice from ■■■ in December 2018, by e-mail, in which he indicated that he was terminating his agreement and he vacated on 15 January 2019.

14. She testified that [REDACTED] gave notice on 04 February 2019 and he vacated on 04 March 2019.
15. [REDACTED] and [REDACTED] were evicted by the sheriff on 15 March 2019 after the landlord had been issued an emergency order of possession by the Director of Residential Tenancies.
16. After the landlord had regained possession of the rental unit she discovered that the tenants had caused significant damage to the property. She submitted the following breakdown of the costs to carry out repairs:

- Cleaning \$1485.00
- Furnace and pipe repair \$6920.54
- Miscellaneous bills..... \$726.22
- Dishwasher..... \$800.00
- Labour to plaster, paint and repair..... \$9000.00
- Replace 2 blinds..... \$100.00
- Replace carpet \$100.00

Total.....\$19,131.76

Cleaning

17. The landlord stated that it appeared that the tenants hadn't carried out any cleaning during their 7 month stay at the rental unit. She stated that there were approximately 60 bags of garbage in the house and in the shed and she suspected that the tenants had never availed of the weekly garbage collection administered by the City. She testified that it took 3 separate trips to the dump to get rid of all the garbage.
18. The landlord also complained that the tenants had left food in the refrigerator and throughout the house and she stated that there were dirty dishes left behind on the countertops and tables and in the sinks. She stated that because of all the food and garbage left at the unit, there was a rat and mouse infestation.
19. As discussed in the next section, the tenants had also allowed the oil tank to run dry and there was no heat in the house for the last few weeks of the tenancy causing the water pipes to freeze and burst. As the tenants had no running water, they were unable to flush the toilets and the photographs submitted by the landlord ([REDACTED] #1, USB drive) show that the toilets were filled with feces. The landlord also complained that the tenants had been throwing bags of feces out the windows.
20. The landlord also complained about a bad odour in the house. She stated that the tenants had been smoking and vaping in the unit even though it was agreed that no smoking was permitted inside the house. The landlord also stated that

the tenants had kept a cat in the unit and it had been urinating and spraying on the walls and floors.

21. The landlord hired a cleaner to clean the rental unit and she submitted a receipt at the hearing (█ #2) showing that the cleaner spent 49.5 hours cleaning the unit, at a rate of \$30.00 per hour. The total bill comes to \$1485.00.

Furnace and Pipe Repair

22. The rental unit has hot water radiators which are heated by an oil burning furnace. The landlord stated that because the tenants had failed to put oil in the oil tank they were unable to heat the unit and the pipes in unit froze and burst. The landlord testified that over 75 pipes were damaged.
23. Because of the burst pipes, the landlord had to hire a plumber to replace the damaged pipes in the rental unit and she submitted a receipt (█ #3) showing that she was charged \$6920.54 by a professional plumber to have that work carried out.
24. After the hearing was concluded, the landlord sent to our office a photograph showing that there was a section of wall cut out showing an exposed pipe. Some other photographs show that there is water on the floor in the apartment on 13 March 2019 and the water in the toilet's cistern is frozen.
25. The landlord stated that after these repairs were carried out she claimed that she could still hear water dripping and she called a second plumber to assess the matter. She submitted a second invoice at the hearing showing that, on 22 April 2019, she was charged \$690.00 to have the main plumbing stack replaced.

Labour to Plaster, Paint and Repair

26. The landlord stated that in order to gain access to many of the pipes in the unit, holes had to be made in the walls and after the pipes were repaired those areas had to be repaired, replastered and then repainted.
27. The landlord testified that she hired someone to carry out the plastering and painting and she submitted a piece of paper (█ #5) on which this person had written that he charged the landlord \$9000.00 in labour costs to repair damage to the entire house: "ceilings – walls – cabinets – flooring. Plastering and painting ect."

Dishwasher

28. The landlord stated that she initially thought the dishwasher was still working after the tenants moved out but she later came to discover that it was broken and had to be removed from the rental unit.

29. The landlord stated that the dishwasher broke because there was no water at the unit after the pipes had burst.
30. No quotes or estimates were submitted at the hearing to establish that it would cost \$800.00 for a replacement.

Miscellaneous Bills

31. The landlord stated that she had given her worker her credit card so that he could purchase supplies to carry out the repairs at the rental unit and she submitted into evidence a stack of copies of various receipts that had been issued to her during the period that the rental unit was being repaired. These receipts total \$572.89.
32. These receipts show that the landlord had purchased paint (\$114.95), some drywall and plywood (\$17.18), pex pipes and other plumbing supplies (\$34.65) and clapboard (\$23.74). Some of the other receipts show purchases, but the landlord was unable to say what they were for; e.g.: ULT HH SLVR, GS SMART GS, EMT STRAP, DZ RNVTE CH 2H, etc. Other receipts were for the costs of developing photographs (\$17.50), gasoline (\$50.24), curtains (\$6.04), kitchen faucets (\$27.59) and cleaning supplies (\$23.87).

Replace 2 blinds

33. The landlord submitted a photograph showing the blinds on the back of the entrance door and she pointed out that one of the slats is damaged as a result of the tenants slamming the door.
34. The landlord stated that these blinds were 2 years old when the tenancy ended. No receipt or quote was submitted at the hearing showing the replacement costs the landlord is seeking here.

Carpet

35. The landlord stated that she had purchased new carpet for the tenants before the tenancy began and she found it to be very dirty after they had moved out.
36. The landlord stated that she disposed of the carpet and it had not been replaced. No photographs were submitted at the hearing and no receipts or quotes showing the cost of the carpet.

█'s Position

Cleaning

37. █ stated that he moved out of the rental unit on 20 February 2019.

38. ■ stated that the reason the garbage had piled up at the unit was because he had been informed that the City had imposed a 4-bag limit on the weekly garbage collection.

Furnace and Pipe Repair

39. ■ stated that he vacated the unit prior to the pipes bursting. He stated that the pipes burst about a week after he had moved out and he was informed of that fact by ■.
40. ■ made no comment on the evidence submitted by the landlord concerning this portion of her claim.

Labour to Plaster, Paint and Repair

41. ■ made no comments on this portion of the landlord's claim.

Dishwasher

42. ■ had nothing to say about the landlord's claim for the costs of replacing the dishwasher. He testified that it was working fine while he resided at the rental unit.

Miscellaneous Bills, Blinds, Carpet

43. ■ made no comment on these submissions.

Analysis

44. 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 willful 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;

45. The photographs submitted by the landlord show that the unit had been left in a deplorable condition. It was evident that no cleaning had been carried out for some time and that issue was exacerbated by the fact that there was no running water.
46. For the amount of garbage that had to be removed from the unit and based on the submitted photographs, I find it probable that it would take up to 50 hours to clean the unit. As such, the landlord's claim succeeds in the amount of \$1485.00.
47. With respect to the issue of the broken pipes, I accept the landlord's testimony and evidence showing that the furnace had stopped working and that there was no heat in the unit. The landlord's photographs also show that there was some water on the floor on 13 March 2019 and there was a section of wall which had been cut out to gain access to a pipe. However, besides that photograph which was submitted after the hearing had concluded no other evidence was presented showing the extent of the damage to the pipes. I am of the view that more evidence would have had to been submitted at the hearing to justify an award for over \$6000.00. I find that \$1000.00 is a fair award for the costs of repairing the pipes.
48. Regarding the replacement of the main plumbing stack, I was not convinced that the tenants were responsible for that issue. Not enough testimony was given at the hearing establishing why the plumbing stack needed to be replaced or what had caused it to leak almost 2 months after the incident with the frozen pipes. No photographs were submitted showing that there was any damage.

49. Regarding the labour costs, the piece of paper submitted by the landlord states that in addition to the plastering and painting, the worker had also repaired the cabinets and flooring. But no testimony or evidence was presented at the hearing establishing that the floors or cabinets had been damaged by the tenants. Furthermore, the landlord's worker had not given a breakdown on how much labour was devoted to repairing the walls and how much was used in repairing the cabinets and floors. I also note that in the receipts submitted by the landlord, 1 piece of drywall, 1 piece of plywood and 4 gallons of paint were purchased and this leads me to a conclusion that of the \$9000.00 the landlord was charged, only a small portion was used for repairing the walls and painting. I further note that only 1 photograph was submitted showing that 1 piece of wall had to be cut out. Taking these factors into consideration, I find that \$1000.00 is a fair award for the costs of painting and plastering
50. Regarding the miscellaneous costs the landlord had incurred, I accept her claim that some walls had to be repaired and that some painting was required. With some of these receipts I am unable to discern what it was the landlord had purchased (e.g., DZ RNVTE CH 2H) and the landlord was not able to clear this up with her testimony. Some of the other receipts don't seem related to the issues presented at the hearing. For example, no evidence was presented at the hearing concerning clapboard or curtains. I find that the landlord is entitled to \$200.00 for the costs of paint, plaster, drywall, plywood and associated materials for painting.
51. Regarding the blind, no receipt was submitted at the hearing showing that a replacement blind would cost \$100.00. I was also not persuaded that that blind could not be repaired instead of being replaced as the photograph only shows that one slat in the blinds is askew.
52. I also find that the landlord's costs for replacing the carpet does not succeed. I cannot see any carpet in any of the submitted photographs and no receipt or estimate for the costs sought by the landlord were submitted at the hearing.

Decision

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

- Cleaning \$1485.00
- Replace pipes..... \$1000.00
- Labour \$1000.00
- Materials..... \$200.00

Total..... \$3685.00

Issue 2: Compensation for Inconvenience – \$1005.00

54. The landlord stated that she has been inconvenienced as a result of the actions of her tenants and she is seeing the following costs:

- Sheriff’s fees..... \$325.00
 - Loss of work \$310.00
 - Gas..... \$50.00
 - Filing fee..... \$20.00
 - Remove garbage to dump..... \$300.00
- Total..... \$1005.00

55. The landlord stated that she was issued an emergency order of possession by this Section on 14 March 2019 and she had that order enforced by the Office of the High Sheriff on the following day. In order to have that order enforced, the landlord was charged a \$125.00 filing fee by the Sheriff and she was also charged \$200.00 by the Sheriff to have the locks changed at the rental unit. She submitted those receipts at the hearing and she is seeking reimbursement for those costs. The landlord is also seeking to be reimbursed for the \$20.00 fee she had to pay to this Section to file this application.

56. The landlord also stated that because of her time spent coming to this Section’s office and going back and forth to the rental unit and the Sheriff’s office she had to take 6 hours off work and she is seeking \$310.00 in compensation. She claimed that she had used \$50.00 worth of gas during those trips and she is seeking to be reimbursed for that amount.

57. The landlord also stated that she had to hire someone to remove the garbage that had accumulated in the shed. She stated that there were over 60 bags of garbage left behind and the person she hired to remove that garbage had to make 3 trips to the dump. She submitted a receipt at the hearing showing that she was charged \$300.00 to have that garbage removed.

Analysis

58. Regarding the fees the landlord was charged by the Sheriff to have the order of possession enforced, I pointed out to her at the hearing that that matter had already been addressed in the order she was issued on 14 March 2019. That order states that the tenant shall pay to the landlord any costs charged by the Sheriff should she be required to have the order of possession enforced. I, therefore, do not need to issue a second order dealing with that same matter.

59. With respect to the time the landlord had to take off work and the gas she had consumed in travelling to and from this Section’s offices and the Sheriff’s offices, these are costs that were incurred in the normal course of business for a landlord and her claim for compensation for those costs does not succeed.

60. The landlord did pay a filing fee of \$20.00. That fee is considered to be a hearing expense and policy with this Section is that where an applicant's claim is successful, their hearing expenses will be awarded also.
61. I also accept the landlord's claim that there was a significant amount of garbage left behind at the rental unit and her receipt shows that she was charged \$300.00 to have it removed. As such, her claim for those costs also succeeds.

Decision

62. The landlord's claim for garbage removal and the filing fee succeeds in the amount of \$320.00.

Issue 3: Utilities - \$72.63

Relevant Submissions

The Landlord's Position

63. The landlord stated that the tenants were responsible for paying their own utilities during their tenancy and she testified that in February 2019 their electricity account was canceled and it reverted back into her name.
64. The landlord submitted a bill from Newfoundland Power at the hearing showing that she was charged \$72.63 for the period from 22 February to 21 March 2019.

█'s Position

65. █ stated that the electricity account was in his name during the tenancy and he claimed that he had paid all of his bills during the time that he resided at the premises.
66. He acknowledged that he had cancelled his account around the time that he had moved out of the rental unit.

Analysis

67. I accept the landlord's claim that the tenants were responsible for paying for their own electricity and the landlord's evidence shows that the account was switched over to her on 22 February 2019.
68. I also accept the landlord's evidence which shows that she was charged \$72.63 after the account was switched to her name.

Decision

69. The landlord's claim for a payment of utilities succeeds in the amount of \$72.63.

Issue 4: Rent – \$4495.00

Relevant Submissions

The Landlord's Position

70. The landlord stated that the agreed rent was set at \$1400.00 per month and the tenants were each required to pay to her \$350.00. Rent was supposed to be paid on the tenant's behalf by AESL.
71. According to the landlord's testimony, she received the rent from AESL for ■■■ and ■■■ for the period ending 31 March 2019.
72. The landlord testified that ■■■ did not pay any rent from the time he moved into the unit in November 2018.
73. With respect to ■■■, the landlord stated that he moved out of the unit in mid-January 2019. His rent was paid and up-to-date for the period ending 31 December 2018 and no payments were received on his behalf after that date.
74. The landlord calculated that the tenants owe her \$4495.00 in rent for the period ending 31 March 2019.

■■■'s Position

75. ■■■ stated that the rent was paid on his behalf by AESL and he had nothing to do with it.

Analysis

76. I accept the testimony of the landlord concerning the payments she had received from AESL from November 2018 onwards.
77. Based on that testimony, I calculate that, for the period ending 31 March 2019, the tenants owe her \$2800.00 (\$350.00 for November and \$350.00 for December 2018 and \$700.00 for each of January, February and March 2019).

Decision

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

Issue 5: Security Deposit

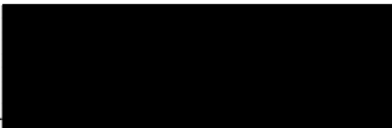
- 79. The landlord stated that she had received a total of \$1036.40 from the tenants as a security deposit and she submitted the cheque stubs she had received from AESL to show those payments.
- 80. As the landlords' claim has been successful, she shall retain the security deposit as outlined in this decision and order.

Summary of Decision

81. The landlord is entitled to the following:

a) Compensation for damages	\$3685.00
b) Compensation for inconvenience	\$320.00
c) Utilities	\$72.63
d) Rent.....	\$2800.00
e) LESS: Security deposit.....	(\$1036.40)
Total Owing to Landlord	<u>\$5841.23</u>

30 September 2019
Date


John R. Cook
Residential Tenancies Tribunal