

Residential Tenancies Tribunal

Decision 19-217-05

John R. Cook
Adjudicator

Introduction

1. [REDACTED] was heard on 30 April 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL. [REDACTED] was heard on 27 June 2019.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the landlord”, also participated.

Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$400.00.
4. The landlord is seeking an order for a payment of rent in the amount of \$800.00, compensation for damages in the amount of \$129.70 and she is seeking authorization to retain the security deposit.

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 case are section 10, 14 and 18 of the *Residential Tenancies Act, 2018* and Policy 9-3 Claims for Damage to Rental Premises.

Issue 1: Security Deposit - \$400.00

Relevant Submissions

The Tenant's Position

7. The landlord and the tenant entered into a monthly rental agreement on 09 April 2018 and copies of the executed rented agreement were submitted at the hearing (█ #1, █ #1). The agreed rent was set at \$800.00 per month and the tenant paid a security deposit of \$400.00.
8. The tenant stated that he vacated the rented premises on 28 February 2019.
9. The tenant stated that the landlord had not returned the security deposit to him after he vacated and he testified that he had not entered into any written agreement with the landlord on the disposition of that deposit.

The Landlord's Position

10. The landlord acknowledged that she had not entered into any written agreement with the tenant on the disposition of the security deposit.
11. She stated that she had retained that deposit as the tenant had caused damages to the rental property.

Analysis

12. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

Security deposit

14. (8) *A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.*

(9) *Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.*

(10) *Where a landlord believes he or she has a claim for all or part of the security deposit,*

(a) *the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or*

(b) *the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.*

(11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

13. It is not disputed that the tenant had paid a security deposit of \$400.00 and that it had not been returned to him after he vacated the unit. It is also not disputed that the landlord and tenant had not entered into any written agreement on the disposition of that deposit.
14. The tenant's application was served on the landlord on 29 March 2019 and if she wished to file an application with this Section seeking to determine the disposition of that deposit, she was required to file an application by 08 April 2019. Her application ([REDACTED]) was not filed with this section until 03 May 2019.
15. Accordingly, and as per subsection 14.(12), the landlord is required to refund the full amount of the security deposit to the tenant.

Decision

16. The tenant's claim for refund of the security deposit succeeds in the amount of \$400.00.

Issue 2: Compensation for Damages - \$129.70

Relevant Submissions

The Landlord's Position

17. The landlord stated that after the tenant moved out of the unit she discovered that there were some damages caused to the property. She submitted the following breakdown of the costs to carry out repairs to those damages:
 - Shower head holder \$39.10
 - Screws in walls \$38.60
 - Scrape on baseboard and hole in wall..... \$52.00

 - Total \$129.70
18. The landlord submitted a photograph at the hearing showing that the plastic clip that holds the shower head is broken. The landlord stated that she replaced that clip at a cost of \$39.10. No receipt was submitted at the hearing. The landlord stated that this clip was 4 years old when the tenant moved in.

19. The landlord stated that the tenant had put 2 screws in the wall to hang a pot and a frying pan. She stated that she had not repaired that damage and no receipts or estimates were submitted at the hearing. The landlord testified that she had phoned a lumberyard and she was informed that a sheet of plywood would cost \$38.60. The unit was last painted 2 years ago.
20. The landlord stated that the tenant had been complaining to her about mould in the rental unit and after he had moved out she stated that she had hired someone to inspect the unit. She stated that she did discover what she initially thought was mould on a baseboard on an inside wall but it turned out that this was merely an area where some paint had been scraped off. She stated that her worker sanded down this baseboard and repainted it. She stated that she had paid \$22.00 for a quart of paint and she is seeking \$30.00 in labour to have that work carried out. No receipts or invoices were submitted at the hearing.
21. The landlord also submitted a photograph showing that there was a large hole punched in the wall and she stated that this damage had been caused by the tenant. She stated that this hole has not been repaired and she does not know how much it would cost to have that work carried out.

The Tenant's Position

22. The tenant stated that the shower head clip was already damaged when he moved in and it had been glued together. He testified that the first time that he used the shower the clip broke where it had been glued.
23. The tenant acknowledged that he had put 2, 1.5 inch wood screws into a wall at the unit. He stated that these are the same sorts of screws one would use if one wanted to hang pictures on the walls. He argued that the landlord would not need to purchase any gyproc to repair such insignificant damage.
24. The tenant stated that there was mould on the baseboards in the rental unit and this was the reason he decided to move out of the unit.
25. With respect to the hole in the wall, the tenant stated that that hole was there when he moved into the unit and he claimed that this damage was pointed out to him by the landlord at that time.

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 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

27. With respect to the shower head clip and the hole in the wall, I find that the landlord has not established that this damage had been caused by the tenant during this tenancy. There was no report of an incoming or outgoing walkthrough and the tenant stated that these damages were there when the tenancy began.
28. Regarding the 2 screw holes, I agree with the tenant that the landlord does not need to purchase plywood or gyproc to repair that damage. I also find that this damage is the result of the normal use of the walls and as it is so minimal it should be chalked up to normal wear and tear.

29. Regarding the scrape on the baseboard, no photographic evidence was presented at the hearing showing that damage and the tenant claimed that there was mould on that baseboard, not a scrape.
30. For the reasons outlined in these last 3 paragraphs, I conclude that the landlord's claim does not succeed. Her claim also fails as she has not submitted any documentary evidence to establish the costs she is seeking here.

Decision

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

Issue 3: Rent - \$800.00

Relevant Submissions

32. The landlord stated that the tenant vacated the unit on 28 February 2019 with only 1 day's notice. According to her application, the landlord is seeking an order for a payment of rent for March 2019: \$800.00.
33. The tenant pointed out at the hearing that someone had moved into the rental unit a week after he had vacated.
34. In response, the landlord claimed that she had new tenants about 3 weeks after the tenant vacated. She corrected that testimony and stated that she had new tenants "exactly 2 weeks" after the tenant vacated and in the following sentence claimed that her new tenants "probably" moved in 2 weeks and 2 days after the tenant vacated.
35. Regarding the rent she had received for March 2019, the landlord testified that her new tenants had paid her \$400.00 for that month. She later testified that she had received the full rent for March 2019.

Analysis

36. In a month-to-month tenancy, a tenant is required to give the landlord at least 1 month's notice that he is terminating his rental agreement. In cases where a landlord does not receive a proper termination notice and where a landlord does not have enough time to put new tenants in place, a tenant may be liable for the loss of rental income suffered by the landlord, subject to the caveat that landlord took all reasonable steps to mitigate that loss of income.
37. If the landlord does mitigate her damages by securing new tenants for the next rental period and if she receives the full rent for that period, then the tenant would not be liable as the landlord had suffered no loss.

38. There is no dispute that the tenant had not given the landlord a proper, 1-month notice that he was terminating his rental agreement. The issue I have to address here is whether the landlord had suffered a loss of rental income for the month of March 2019.
39. No receipts were submitted showing the payments the landlord had received from her new tenants for March 2019 and I found her testimony on that matter to be inconsistent. According to her application, filed on 03 May 2019, she indicates that she is seeking the full rent for March 2019. But at the hearing, she stated that her new tenants paid her \$400.00 for that month and she also stated that she had received the full rent for March 2019 from her new tenants.
40. Based on the landlord's inconsistent testimony, I cannot make a determination as to how much rent she had received for March 2019. As such, her claim does not succeed.

Decision

41. The landlord's claim for a payment of rent does not succeed.

Summary of Decision

42. The tenant is entitled to the following:
- Refund of Security Deposit.....\$400.00

11 July 2019

Date


John R. Cook
Residential Tenancies Tribunal