

Residential Tenancies Tribunal

Decision 19-322-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am on 28 May 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1” and “landlord2”, respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate.

Issues before the Tribunal

3. The landlords are seeking the following:
 - An order for compensation for damages in the amount of \$3314.51
 - An order for a payment of rent in the amount of \$700.00; and
 - Authorization to retain the security deposit of \$350.00.

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 he has been properly served. With his application the landlords had submitted an affidavit stating that the tenant was personally served with notice of this hearing on 14 May 2019 and he has had 13 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 his absence.

Issue 1: Compensation for damages - \$3314.51

Relevant Submissions

The Landlords' Position

7. Landlord1 stated that they had entered into a monthly rental agreement with the tenant on 01 April 2015 and a copy of that executed agreement was submitted with their application. The agreed rent was set at \$700.00 per month and the tenant had paid a security deposit of \$350.00.
8. When the tenant moved into the rented premises a walkthrough was conducted and a copy of the inspection report that was compiled at that time was submitted with the landlords' application (█ #2). Except for the bathtub, which had some chips taken out of it, no deficiencies were noted on the report and every room was described as being in good condition.
9. On 03 March 2019 the tenant informed the landlord that he was terminating their rental agreement and he vacated at the end of that month.
10. Landlord1 stated that when they regained possession of the rental unit they discovered that the tenant had caused significant damages to the property and with their application they submitted the following breakdown of the costs to carry out repairs (█ #3):

- Kitchen countertop..... \$201.03
- Back bedroom closet door \$78.19
- Back bedroom heater \$45.99
- Front bedroom heater \$45.99
- Front bedroom thermostat \$16.09
- Handle for window \$28.75
- Shower stall enclosure \$180.54
- 3 cans primer..... \$125.89
- 4 blinds..... \$82.75
- Cupboard paint kit \$134.54
- Handles for sinks \$38.62
- Toilet handle \$18.96
- Toilet seat..... \$28.74

- Shower curtain rod \$14.94
- Bathroom towel handle..... \$13.21
- Dryer vent hose \$5.51
- Curtain for front door \$11.49
- Bathroom fan \$44.84
- Kitchen light..... \$29.89
- Smoke detector \$13.79
- Cleaning \$100.00
- Plaster \$37.94
- 6.5 hours to clean bedrooms \$123.50
- Dispose of tires and rims \$50.00
- Living room carpet..... \$777.33
- Second-hand fridge and stove..... \$450.00
- Second-hand dehumidifier..... \$75.00
- Labour \$1043.00

Total \$3816.52

11. Landlord1 stated that the kitchen countertop was newly installed in 2013 and it was in good condition when the tenant moved in. He submitted photographs at the hearing (█ ##4-6) showing that there were numerous cracks now in that countertop and it has to be replaced. Landlord1 stated that the tenant had been using that countertop to store lumber and he suspected the damage may have been caused by him hammering on it. Landlord1 stated that he had received a quote of \$201.03 from Kent for the costs of purchasing a new countertop and he estimated that it would take him 1.5 hours to install.
12. Landlord1 submitted 2 photographs (█ #7, #8) of a bi-fold closet door showing that the front panel of the door has almost been pulled away and he also complained that the hardware for the track had been damaged. He submitted a receipt (█ #9) showing that he had paid \$67.99 for a replacement door and he estimated that it would take him 1 hour to install. He stated that this door was new when the tenancy began.
13. Regarding the heaters, the landlord submitted 2 photographs showing that the tops of these heaters had been “squat” (█ #10, #12) and he suspected that this damage had been caused either by the tenant laying something on top of them or by him standing on the heaters. He also pointed out that one of the heaters was rusted out because the tenant had been letting water come in through a window. He stated that these heaters were newly installed just before the tenant moved in. He submitted a receipt at the hearing (█ #11) showing that he purchased 2 new heaters at a costs of \$91.98 and he figured he could install them both in 1 hour.
14. Exhibit █ #13 shows that the knob of a thermostat is missing. Landlord1 stated that this thermostat was installed in 2001. Exhibit █ #11 shows that he had

purchased a new thermostat at a cost of \$16.09 and he estimated that it would take him 30 minutes to install it.

15. Exhibit [REDACTED] #14 shows that a crank-handle was missing from one of the windows. A replacement was purchased at a cost of \$16.78 ([REDACTED] #11) and the landlord claimed that it will only take him 10 minutes to install it.
16. The rental agreement states that no smoking was permitted in the apartment but landlord1 stated that the tenant had nevertheless been smoking in the unit during the 4 years he resided there. He complained that the whole apartment has been “smoked out” and there is a strong odour of cigarettes and almost all of the surfaces in the unit have turned yellow, including the tub enclosure ([REDACTED] #15). Regarding the enclosure, landlord1 stated that he was unable to clean it and it has to be replaced. Exhibit [REDACTED] #9 shows that he had paid \$128.78 for a new tub enclosure and caulking and he figured that a professional would be able to install it in 2 hours. Landlord1 stated that the tub enclosure was approximately 9 years of age when the tenant vacated.
17. Besides the tub enclosure, landlord1 stated that all of the walls in the unit had also turned yellow and smelled of cigarette smoke. He stated that the walls had a flat finish and the ceiling was stucco which made it too difficult to clean and he stated that the whole unit needs to be repainted. Landlord1 stated that the unit was painted in 2015 just before the tenant moved in and he acknowledged that he probably would have had to repaint after the tenant moved out, anyhow. In that respect, he is not seeking compensation for repainting. Rather, he claimed that because of the smell, before he can paint he has to apply a sealer/primer to all surfaces. [REDACTED] #11 shows that he had paid \$103.47 for 3 gallons of primer and he estimated that it would take him 6 hours to apply the primer to the walls and ceilings.
18. Because of the smoking, all of the blinds in the unit had also yellowed. And besides that issue, landlord1 complained that the handles to all the blinds were missing and the submitted photographs ([REDACTED] ##16-19) also show that several of the slats in these blinds were damaged or missing. [REDACTED] #11 shows that the landlords had spent \$77.00 for new blinds. Landlord1 stated that these blinds were new when the tenant moved in in 2015.
19. Landlord1 also submitted photographs ([REDACTED] ##20-22) showing the kitchen cupboards and he pointed out that there were numerous chips taken out of the paint on these cupboards. He suggested that the tenant had been abusing these cupboards to have caused so much damage and he stated that they need to be repainted. They were last painted in 2015 just before the tenant moved in. Landlord1 stated that a paint kit costs \$134.54 at Kent and landlord2 estimated that it would take her 5 hours to repaint these cupboards.
20. Landlord1 also stated that he had to purchase new handles for the faucets in the kitchen and bathroom and his receipt ([REDACTED] #11) shows that he had paid \$57.59 for them. Landlord1 complained that the tenant had taken the caps off of each of

the handles and he submitted photographs of those handles at the hearing (MM #5, #22, #23). He stated that one of these faucets were new when the tenant moved in while the other was probably 5 years of age. Landlord1 estimated that it would take 1 hour to install these new handles.

21. Pictures were also submitted showing the toilet (█ #26, #27) and landlord1 pointed out that the handle was broken off and the toilet seat was heavily soiled. The receipt (█ #11) shows that he paid \$8.50 and \$21.84, respectively, to replace those 2 items. Landlord1 figured it would take him 30 minutes to install the handle and the seat.
22. Landlord1 also complained that the shower curtain rod as well as the curtain in the bathroom had to be replaced as it was soiled with nicotine and could not be cleaned. His receipt (█ #11) shows that he had paid \$14.94 for a replacement. He also complained that the towel rack in the bathroom had also yellowed and it was broken. He paid \$19.88 for a replacement. He stated that it would take 15 minutes to repair these items
23. Landlord1 also stated that he had to replace 2 vent hoses. The vent hose for the kitchen range-hood was "greased out" and clogged and the hose for the dryer, which was white when the tenancy began, is now stained yellow from the cigarette smoke. Landlord1 stated that a new vent hose costs \$5.51.
24. Exhibit █ #28 shows a light fixture and landlord1 pointed out that a metal attachment holding the glass dome in place had been taken from another light in the house and that second light needs to be replaced as the attachment cannot be purchased separately. █ #11 shows that a new light was purchased for \$25.29 and landlord1 figured it would take him 30 minutes to install it.
25. Photograph █ #29 shows the sheer curtains in the front door window and landlord1 pointed out that they were stained yellow and that there were holes in them. He stated that this curtain needs to be replaced and he is seeking \$11.49 for the costs of replacement.
26. Landlord1 also stated that the bathroom fan needs to be replaced. He stated that although the motor still works the fan blades do not turn. Landlord1 claimed that the fan became damaged as a result of dirt build up and neglect by the tenant. He submitted 2 photographs (█ #30, #31) showing that the fan had also yellowed and that there was a large amount of dust on the inside of it. Landlord1 stated that he has not yet purchased a replacement fan, but he testified that the cheapest one at Kent costs \$44.84 and he estimated that it would take him 2 hours to install it. He stated that the fan was approximately 7 years old.
27. Landlord1 also submitted photographs of the kitchen light (█ #32) and a smoke detector (█ #33) and he also pointed out that these 2 fixtures were heavily stained from nicotine and landlord1 testified that he was unable to clean these items. His receipt, █ #11, shows that the costs of replacement for these 2

items was \$37.94 and \$12.51, respectively. Both of these fixtures were new when the tenancy began.

28. Landlord1 also complained that the tenant had a very poor temper and he stated that he would sometimes take his anger out on the walls in the rental unit by either kicking or punching them. He submitted 7 photographs at the hearing (██████ ##34-40) showing the condition of the walls in the unit after the tenant moved out and he pointed to the various dents and holes. He stated that it would likely take him 2 days to plaster these holes and his receipt shows that he purchased a pail of plaster at a cost of \$28.62.
29. Landlord1 also complained that the apartment was left in a very dirty state after the tenant moved out and he paid his daughter \$100.00 to clean the bathroom, kitchen and living room. He also stated that he personally had spent 6.5 hours cleaning the 2 bedrooms and he testified that he had to purchase a special cleaner to get the nicotine off the walls in those rooms. He submitted an additional 26 photographs (██████ ##53-78) showing the cleanliness of the unit after he regained possession of the property and pointed out that besides the yellow surfaces all throughout the unit, the tenant had also left debris and garbage on the floors and there was dirt and grease on the appliances and walls.
30. He also complained that the tenant had left behind 4 car tires. He stated that before they can be disposed of, the tires have to be separated from the rims and he testified that his garage will charge him \$5.00 for each tire. In addition to that cost, he is seeking compensation in the amount of \$30.00 for the costs of bringing those tires to a garage and then to the dump.
31. Landlord1 also submitted photographs at the hearing showing the conditions of the floors throughout the unit (██████ ##44-50). These photographs show that the carpets in the apartment were heavily soiled and there were numerous cigarette burns visible. There were vinyl cushion floors in the bathroom and porch and the photographs also show that these floors had cigarette burns and there were several rips and tears identified. Landlord1 stated that these floors have not yet been replaced, but he submitted a quote at the hearing (██████ #51) showing that he would be charged \$777.33 to purchase new floors and have them installed. He stated that the carpets were approximately 6.5 years old when the tenant moved out and the cushion floor was 5 years of age.
32. The landlords are also seeking the costs of purchasing a second-hand refrigerator and stove and they estimate that they will spend \$450.00 for those appliances. Regarding the refrigerator, landlord1 again complained that because of the smoking, the refrigerator had also turned a yellow colour. He also stated that the top of the refrigerator had been squat down because something heavy had been laid on it and it had begun to rust. He stated that this refrigerator was approximately 16 years of age. The stove, however, was just 1 year old when the tenant moved in and he complained that it is not working at all now. He testified that he had to have the oven repaired twice during this tenancy and he claimed that on both occasions it had broken down because there was so much

grease in the oven that it had shorted out the computer. He stated that it is cheaper for him to purchase a second-hand stove than it would be for him to have this one repaired.

33. Landlord1 also stated that he has to purchase a second-hand dehumidifier now as well as the one he had supplied the tenant with is no longer functioning. He submitted photographs (■■■ #60, #61) showing that the vents on the dehumidifier were dirty and clogged with dust and he argued that it was the tenant's failure to clean these vents that contributed to it breaking down. Landlord1 stated that the dehumidifier was approximately 7 years old.

Analysis

34. 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;

35. On review of the evidence submitted at the hearing and based on the testimony of the landlords, I find it probable that the tenant had been smoking in the unit and had caused there to be an odour of cigarettes in the unit and had caused the yellowing on almost all the surfaces in the rental unit.

36. I also find it probable that the tenant had caused the bulk of the damages identified by the landlords and I accept their claim that they were required to carry out the majority of the repairs as described at the hearing. Based on the landlords' testimony concerning the amount of time it took, or will take, to carry out the repairs, and based on this Section's policy concerning life expectancy and depreciation, I find that the landlords are entitled to an award of \$2564.97 in compensation for damages, determined as follows:

• Kitchen countertop.....	\$129.62
• Back bedroom closet door	\$69.40
• Heaters.....	\$89.40
• Front bedroom thermostat.....	\$24.40
• Handle for window.....	\$15.23
• Shower stall enclosure	\$103.19
• 3 cans primer and labour for painting	\$219.87
• 4 blinds.....	\$69.40
• Cupboard paint kit	\$197.00
• Handles for sinks.....	\$59.40
• Toilet handle and seat.....	\$24.70
• Shower curtain rod and towel rack	\$24.85
• Dryer vent hose	\$24.91
• Curtain for front door	\$11.49
• Kitchen light and smoke detector	\$39.40
• Cleaning	\$226.10
• Plaster holes in walls.....	\$347.94
• Dispose of tires and rims	\$50.00
• Living room carpet.....	\$388.67
• Second-hand fridge and stove.....	\$450.00
 Total	 <u>\$2564.97</u>

37. With respect to the bathroom fan and the dehumidifier, I find that not enough evidence was presented by the landlords to establish that they had ceased

working because of any deliberate or negligent act on the part of the tenant and I therefore make no award for these claims.

Decision

38. The landlord's claim for compensation for damages succeeds in the amount of \$2564.97.

Issue 2: Rent - \$700.00

Relevant Submissions

The Landlords' Position

39. Landlord1 stated that he regained possession of the rental unit on 01 April 2019. He claimed that because of all the damages the tenant had caused to the unit he was unable to have the unit rented for the month of April 2019 and he figured that it will be August 2019 before he will be able to put new tenants in place. Landlord2 stated that, 2 months after the tenant moved out, the apartment still smells of cigarettes and marijuana.
40. The landlords are seeking compensation for the loss of rent they suffered for April 2019: \$700.00.

Analysis

41. I agree with the landlords that the tenant had caused considerable damage to the rental unit making it impossible to rent out to new tenants until major repairs were carried out. As such, their claim for compensation for lost rent for the month of April 2019 succeeds.

Decision

42. The landlord's claim for compensation for lost rental income succeeds in the amount of \$700.00.

Issue 3: Security Deposit

43. Landlord1 stated that the tenant had paid a security deposit of \$350.00 on 28 March 2015 and receipt of that deposit is acknowledged in the submitted rental agreement (█ #1). As the landlords' claim has been successful, they shall retain the security deposit as outlined in this decision and order.

Issue 4: Hearing Expenses

- 44. Landlord1 submitted a hearing expense claim form (█ #79) as well as a receipt for \$20.00 for the costs of filing this application, a receipt for \$70.00 for the costs of hiring a process server and receipts totalling \$29.83 for the costs of developing photographs. As the landlords' claim has been successful, the tenant shall pay these hearing expenses.
- 45. The landlords' claim for hearing expenses succeeds in the amount of \$119.83.

Summary of Decision

46. The landlords are entitled to the following:

- Compensation for damages \$2564.97
- Rent..... \$700.00
- Hearing expenses..... \$119.83
- LESS: Security deposit..... (\$350.00)
- Total Owing to Landlord \$3034.80

12 August 2019

Date

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John R. Cook
Residential Tenancies Tribunal