

## Residential Tenancies Tribunal

Decision 19-458-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:20 pm on 26 June 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
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing by teleconference. Her co-respondent, [REDACTED], did not participate.

### Issues before the Tribunal

4. The landlord is seeking the following:
  - An order for vacant possession of the rented premises, and
  - A payment of \$1187.54 in compensation for damages.

### 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 sections 10, 22 and 24 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

### Preliminary Matters

7. The respondent, [REDACTED], was not present 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 respondents' absence so long as he has been properly served. With their application, the landlords submitted an affidavit stating that [REDACTED] was personally served with notice of the hearing on 12 June 2019 and he has had 13 days to provide a response. As he 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: Vacant Possession of Rented Premises**

### **Relevant Submissions**

#### The Landlords' Position

8. Landlord1 stated that he had entered into a 1-year, fixed-term lease with the tenant commencing 01 February 2019 and a copy of that agreement was submitted at the hearing ([REDACTED] #1). The agreed rent is set at \$775.00 and the tenant paid a security deposit of \$500.00.
9. Landlord1 stated that he had carried out an inspection of the rented premises on 23 May 2019 and on that date he discovered numerous deficiencies. Accordingly, on 02 June 2019 landlord2 issued the tenant a Request for Repairs and the following items were to be completed by 06 June 2019:
  - Door knob and enclosure completely missing from door
  - Flooring torn by bathroom
  - Front screen door absorber closure bent
  - Improper cannabis grow lighting and above legal limit of plants
  - Burnt mark in carpet and excessive soiling
10. Landlord1 testified that he carried out an inspection of the rental unit again on 07 June 2019 and he claimed that none of the items on the list had been addressed.
11. Landlord1 stated that, on that same day, he served the tenant with a termination notice and a copy of that notice was submitted with his application ([REDACTED] #2). That notice was issued under section 22 of the *Residential Tenancies Act, 2018* (notice where tenant's obligations not met) and it had an effective termination date of 13 June 2019.
12. The tenant has not vacated as required and the landlords are seeking an order for vacant possession of the rented premises.

## The Tenant's Position

13. Although the tenant acknowledged receiving the termination notice, she denied that she had been issued any request to carry out repairs at the unit.
14. Regarding the items listed on the Request for Repairs, the tenant testified that some of these issues were not caused by her while the other items she had addressed as required.
15. Regarding the door knob, the tenant stated that it was loose when she moved into the unit and one day it just came off in her hand. She claimed that she had not damaged that door knob deliberately or through any negligent act. She stated that this happened shortly after she moved into the rental unit and she informed landlord2 about it right away and she was informed by landlord2 that she would repair it.
16. With respect to the flooring, the tenant acknowledged that there is a rip in it, but she pointed out that it was not properly installed by the landlord and that there was already a rip in it when she moved in. She stated that when she sweeps that floor, the broom catches the damaged area and causes further tearing.
17. Regarding the door closer, the tenant stated that she had repaired that approximately 1 week ago. But she pointed out that there was already an issue with that closer when she moved into the rental unit and claimed that the landlords were in the process of repairing it on the day she moved in.
18. She also claimed that the cannabis plants were removed on 23 June 2019. She claimed that she had permission from the landlords to grow cannabis in the rental unit but she claimed that once she was made aware that they had a problem with the operation she had set up she removed the plants from the apartment.
19. With respect to the burn mark on the carpet, the tenant acknowledged that she had caused that damage and she stated that she has offered to replace it.

## **Analysis**

20. Statutory condition 2, set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

### ***Statutory conditions***

***10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:***

...

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.

and section 22 of this Act states:

**Notice where tenant's obligation not met**

22. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.

(2) Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

(3) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the landlord;

(b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and

(c) be served in accordance with section 35.

21. Regarding the door knob, the flooring in the bathroom and the door closure, I found the tenant's testimony concerning these matters to be believable and I find that these 3 items were not damaged as a result of any deliberate or negligent act on her part and there was likely already pre-existing damage caused to them.
22. With respect to the cannabis plants, I was not convinced that having an excess number of these plants in a rental unit contravenes statutory condition 2. No evidence was presented establishing that the number of plants the tenant was growing had caused any damage to the unit or that they affected the cleanliness of the property. Landlord1 presented some evidence at the hearing to establish that having more than 4 cannabis plants at a rental unit contravenes federal laws on home based cannabis growth and in that respect this issue is probably a contravention of statutory condition 7 (peaceful enjoyment and reasonable privacy). But where a tenant contravenes that statutory condition, the landlord would have to issue a notice under section 24 of the *Residential Tenancies Act, 2018*, not section 22.

23. Regarding the final item on the landlord's request for repairs, the tenant acknowledged that she had burnt the carpet and that she had not had it replaced. I therefore find that, with respect to this matter, she was indeed in contravention of statutory condition 2 of the *Act* and the landlord was therefore entitled to issue a termination notice under section 22 of the *Act*.
24. As the termination notice meets the timeframe requirements set out in this section of the *Act* and as it was properly served, it is valid.

**Decision**

25. The landlords' claim for an order for vacant possession of the rented premises succeeds.
26. The tenant shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

**Issue 2: Compensation for Damages - \$1187.54**

Relevant Submissions

The Landlords' Position

27. Landlord1 stated that because of the damages caused by the tenant he is going to have to replace the carpet and install new cushion flooring in the bathroom. He will also have to install a new door handle and a new door closure. None of this work has yet been carried out by the landlord
28. With respect to the costs the landlords are seeking here, they submitted the following breakdown with their application.

• Install carpet .....	\$250.00
• Install vinyl floor .....	\$150.00
• Install door handle .....	\$25.00
• Install door closure .....	\$25.00
• Job site clean up .....	\$150.00
• Project, administrative, travel costs .....	\$150.00
• Materials .....	\$282.64
• HST .....	\$154.97
 Total.....	 \$1187.54

29. No quotes, estimates, receipts or invoices were submitted at the hearing to establish the costs the landlords are seeking here.

## Analysis

30. 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;*

31. Regarding the vinyl flooring, the door closure and the door knob, I was not persuaded that the tenant had damaged these items through any deliberate or negligent act on her part and it was her testimony that these items were already damaged when she moved into the rental unit.

32. Regarding the carpet, although the tenant does acknowledge that she had caused damage to it, the landlord has produced no evidence to establish the costs of the replacement carpet or to establish that it would cost \$250.00 to have someone install that carpet. For these reasons, the landlords' claim does not succeed.

### **Decision**

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

### **Summary of Decision**

34. The landlord is entitled to the following:

- An order for vacant possession of the rented premises,
- The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

04 July 2019

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Date

  
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John R. Cook  
Residential Tenancies Tribunal