

## Residential Tenancies Tribunal

Decision 19-0484-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 11:15 am on 24 July 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 respondents, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1” and “tenant2”, respectively, also participated.

### Issues before the Tribunal

3. The landlord is seeking an order for compensation for damages in the amount of \$1142.00 and he is seeking authorization to retain the \$475.00 security deposit.
4. The tenants are seeking an order for a refund of the security deposit in the amount of \$475.00.

### 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 is section 10 of the *Residential Tenancies Act, 2018*, Policy 9-3 Claims for Damage to Rental Premises and Donald H. L. Lamont, Residential Tenancies, 6<sup>th</sup> edition (Carswell: Scarborough, ON, 2000).

## Preliminary Matters

7. Neither the tenants nor the landlord were served with the respective applications 10 clear days prior to the hearing date. The tenants and the landlord waived their right to proper notice and all parties requested that the hearing proceed as scheduled.
8. The landlord amended his application at the hearing and stated that he was now seeking \$1104.69 in damages.
9. The landlord called the following witnesses:
  - [REDACTED] – landlord's neighbour
  - [REDACTED] – landlord's son

## Issue 1: Compensation for Damages - \$1104.69

### Relevant Submissions

#### The Landlord's Position

10. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenants commencing 01 October 2018 and a copy of the executed lease was submitted with his application ([REDACTED] #1). The agreed rent was set at \$950.00 and it is acknowledged in the lease that the tenants had paid a security deposit of \$475.00.
11. Although the lease was set to run until 30 September 2019, the landlord and tenants agreed that the tenancy would end on 31 May 2019 and the tenants vacated on that date.
12. The landlord stated that after he had regained possession of the rented premises he was required to carry out some repairs to the rental unit and with his application he submitted a breakdown of the costs to carry out repairs ([REDACTED] #2) and a second breakdown was submitted at the hearing ([REDACTED] #3). The landlord is seeking compensation in the amount of \$1104.69 to address the following items:
  - Plastering and painting of apartment
  - Repair door jamb
  - Repair damaged siding
  - General cleaning
  - Pest control
  - Missing window protector

### Painting

13. The landlord stated that after the tenants had moved out he discovered that there were numerous nails and screws in the walls throughout the apartment and the tenants had drawn pencil marks to line up their artwork.
14. The landlord also complained that there were numerous scuffs and chips taken out of the walls as well.
15. In support of his claim, the landlord submitted a USB drive and he played a video at the hearing showing a walkthrough of the apartment a few days after the tenants had moved out and the damage to the walls was identified in that video. The landlord also pointed to other photographs on that drive showing that he had plastered all these damaged areas prior to painting.
16. The landlord submitted receipts at the hearing (█ #3) showing that he has spent \$75.93 for paint and painting supplies and he is also seeking compensation for 32 hours of his personal labour.
17. The landlord stated that the unit was last painted 4 years and 1 month prior to the tenants taking possession in 2018 and he described the unit at that time as being in good condition.

### Repair door jamb

18. The landlord submitted 2 photographs at the hearing showing the doorjamb (█ #5, #6) and he pointed out that there was a crack running down the side of the doorstop.
19. The landlord stated that this damage has not yet been repaired, but he figured that he would either have to glue the crack together or replace the door stop. He estimated that it would take him approximately 2 hours to carry out that work and claimed that a doorstop costs between \$12.00 and \$15.00. No estimates were submitted at the hearing.
20. The landlord stated that the doorjamb was not damaged when the tenancy began. He also stated that it was original to the house, which he testified was built in 1978.

### Repair damaged siding

21. The landlord submitted a photograph at the hearing showing that there is a hole in the exterior vinyl siding (█ #8). He stated that this damage was caused by the tenants' barbeque and he pointed out that the tenants had accepted responsibility for causing that damage.

22. The landlord stated that this damage has not yet been repaired but he stated that he was told that it would cost \$250.00 to repair. No estimates were submitted at the hearing. The landlord stated that the tenants had offered him \$100.00 in compensation and he is willing to accept that offer.
23. The landlord stated that this siding is between 22 and 24 years of age.

#### General Cleaning

24. The landlord stated that after the tenants vacated he had a relative carry out some required cleaning and he is seeking compensation for 6 hours of labour.
25. In the video played at the hearing, the landlord pointed out that the oven had not been adequately cleaned and the oven racks, which were left on top of the stove, were dirty. The video also shows that the floor in a closet had not been swept up.
26. He also stated that the downstairs laundry room needed cleaning, that the bathroom had to be cleaned, especially the vanity underneath the sink, and the front and back vestibule areas were left dirty.

#### Pest control

27. The landlord stated that in January 2019, tenant1 contacted him and reported to him that he had seen several silverfish insects in his apartment. In response, the landlord stated that he purchased a commercial insecticide and he sprayed the tenants' apartment.
28. After the tenants vacated the landlord stated that he found 1 dead silverfish at the apartment and he decided, as a precaution, to spray the apartment again.
29. The landlord stated that it was his belief that the tenants had brought the silverfish with them from their previous apartment, though he admitted that he had no way of knowing for sure. He pointed to an e-mail from 16 May 2019 where tenant1 writes: "The silver fish issue: it is POSSIBLE that we brought them from our last place but you can neither prove or refute that claim."
30. The landlord is seeking \$120.00 in compensation for 1 hour of his time spraying the unit and for the costs of the insecticide. No receipt was submitted at the hearing.

#### Missing window protector

31. The landlord stated that in the bathroom he had installed a clear piece of poly over the window to prevent water from seeping into the sill so as to prevent rot.

32. He stated that when the tenancy ended he discovered that that piece of poly was missing and he had to install a new one.
33. The landlord is seeking \$36.00 for the replacement costs. No receipts or quotes were submitted at the hearing.

### The Tenants' Position

#### Painting

34. Tenant1 stated that when they first moved into the unit in 2018 it was obvious that the walls had not been painted for some time and he stated that it was evident that they had suffered some wear and tear.
35. Tenant2 stated that there were already nails and screws in the walls when they moved in and as evidence of that claim she pointed out that some of the screws were painted, meaning that they were already in the walls when the unit was last painted.
36. Tenant2 also stated that although they had strung some lights in the master bedroom, she testified that they were strung on the thumbtacks that were already in the walls when they moved in.
37. Tenant1 did acknowledge that he had put up some pictures and artwork during his tenancy, but he argued that the resulting damage is merely normal wear and tear. He also pointed out that there was no report of an incoming walkthrough and argued that the landlord had failed to establish the condition of the unit when they moved in.

#### Repair doorjamb

38. Tenant1 and tenant2 denied that they had caused this damage to the doorjamb and they both denied that they were aware that there was any crack there.
39. Tenant2 stated that the room in which this crack was found was used by them as a storage room and she stated that she rarely entered that room.
40. Tenant1 also argued that the landlord had failed to establish the condition of the doorjamb when the tenancy began and claimed that the crack could have been there when they moved in.

#### Repair damaged siding

41. The tenants did acknowledge that they had caused the damage to the siding with their barbeque.

42. However, tenant1 contested the landlord's claim that it would cost \$100.00 to repair.

Cleaning

43. Tenant1 stated that this portion of the landlord's claim was "absurd" and argued that the landlord's own video shows that the unit was clean after they moved out. He did acknowledge that the floor in the closet had not been swept up.
44. Tenant2 also claimed that the unit had been thoroughly cleaned before they vacated.

Pest control

45. Tenant1 submitted 7 photographs at the hearing (■■ #1-7) showing what he described as mold and he complained that the unit was damp and had poor ventilation.
46. He also complained that when he moved into the unit he had to carry out extensive cleaning and stated that there was mold in the windows at that time.
47. Tenant1 suggested that the silverfish issue existed before he moved into the unit and is related the damp and moldy conditions in the apartment and to the fact that the previous tenant had not kept it adequately clean.

Missing window protector

48. Tenant1 acknowledged removing the piece of plastic that was over the window. He stated the reason he removed it was that it was growing mold and it was dirty.
49. Tenant1 stated that the mold build-up was caused by the fact that there was no fan in the bathroom.

**Analysis**

50. 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*

51. I accept the landlord's claim that there were some holes in the walls in the rental unit and that he incurred costs to have them repaired. However, I agree with the tenants that some of this damage ought to be chalked up to normal wear and tear.
52. As Donald Lamont states in Residential Tenancies "... there is the common law implied covenant to use the premises in a proper and tenant-like manner" which means "that the tenant will use the premises as if they were his own, and therefore he should not do or omit doing anything whereby damage is caused" and he goes on to cite *Barron v. Bernard (1972), 17 O.R. (2d) 118 (Ont. Dist. Ct.)* in which the judge ruled that "ordinarily a tenant does not have to repair holes in the wall caused by the ordinary use of picture hangers in the ordinary use of the premises" (p.116). That is, hanging pictures and mementos on walls in a rental unit is "ordinary use" and the tenant cannot be held liable for repairs.
53. Furthermore, landlords are expected to repaint a rental unit every 3 to 5 years anyhow, as a result of normal wear and tear through successive tenancies, and I

therefore find that that paintjob was coming to the end of its useful life and the walls were due to be repainted anyhow.

54. Additionally, as there was no incoming inspection report, I find that the landlord had failed to establish that all of the damage that he identified in the video can be attributed to the tenants. For these reasons, the landlord's claim for the costs of repainting the rental unit does not succeed.
55. Regarding the doorjamb, I agree with the tenants that the landlord has failed to establish the condition of the doorjamb when the tenancy began and in that respect, he has not established that this damage was caused by the tenants during this tenancy. No photographs were presented showing the condition of the unit when the tenancy began and there was no report of an incoming inspection.
56. Regarding the vinyl siding, as the tenants acknowledge that they had caused that damage I find that they are responsible for the costs of the repairs. Although that damage has not yet been repaired I find that \$100.00 is a reasonable award for the costs of purchasing new siding, removing the damaged pieces and then installing the new siding.
57. With respect to the silverfish, I find that the landlord had failed to produce enough evidence to convince me that that issue was caused by the tenants or that the tenants had transported those insects from their previous residence. Hence, that portion of his claim fails.
58. I also find that the landlord's claim for the costs of replacing the window protector fails as no evidence was presented to establish the replacement costs. In any case, based on the description of that protector provided by the tenants, it probably needed to be replaced soon anyhow.

## Decision

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

- Siding ..... \$100.00
- Cleaning ..... \$38.80
- Total ..... \$138.80

## Issue 2: Security Deposit - \$475.00

60. The tenants paid a security deposit of \$475.00 on 01 October 2018 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim for compensation for damages has been partly successful, he



shall retain that portion of the security deposit and return the remainder to the tenant as outlined in this decision and order.

**Issue 3: Hearing Expenses**

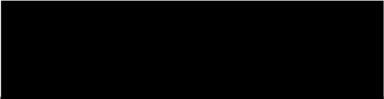
61. As both parties' claims have been partly successful, they shall pay their own hearing expenses.

**Summary of Decision**

62. The tenant are entitled to the following:

- a) Refund of Security Deposit.....\$475.00
- b) LESS: Damages..... (\$138.80)
- c) Total Owing to Tenant.....\$336.20

19 November 2019  
\_\_\_\_\_  
Date

  
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John R. Cook  
Residential Tenancies Tribunal