

Residential Tenancies Tribunal

Decision 19-0488-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:20 pm on 25 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 by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, also participated by teleconference.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$1940.00;
 - An order for a payment of utilities in the amount of \$119.91;
 - Authorization to retain the security deposit of \$650.00; and
 - Authorization to retain an overpayment of rent totalling \$710.14.

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

Issue 1: Compensation for damages - \$1940.00

Relevant Submissions

The Landlords' Position

7. The landlord stated that she had entered into a monthly rental agreement with the tenant on 26 April 2019 and a copy of that executed agreement was submitted at the hearing (█ #1). The agreed rent was set at \$900.00 per month and it is acknowledged in that agreement that the tenant had paid a security deposit of \$650.00.
8. The landlord stated that on 01 June 2019 she issued the tenant a termination notice and a copy of that notice was submitted at the hearing (█ #3). That notice was issued under 3 different sections of the *Residential Tenancies Act, 2018*: s. 20 (notice where material term of agreement contravened), s. 22 (notice where tenant's obligation not met), and s. 24 (notice where tenant contravenes peaceful enjoyment and reasonable privacy).
9. That notice had an effective termination date of 06 June 2019 and the tenant vacated on that date.
10. The landlord stated that after she regained possession of the rental unit she discovered that the tenant had caused some damages to the unit. She hired a contractor to carry out the repairs and she submitted an invoice (█ #4) showing that she was charged \$1940.00 to have that work carried out. The breakdown on the invoice is as follows:

• Cleaning	\$175.00
• Trash and pet waste disposal.....	\$25.00
• Cigarette odour removal.....	\$175.00
• Partial re-painting	\$750.00
• Replace exterior door and toilet flush box	\$450.00
• Repair floor scratches.....	\$15.00
• Labour	\$200.00
• Base administrative fee	\$150.00
 Total	<u>\$1940.00</u>

Cleaning

11. The landlord stated that the tenant had informed her that she had hired professional cleaners to clean the apartment before she had vacated but the landlord argued that these cleaners had not done a thorough job and she was required to hire her contractor to carry out that work.

12. The landlord claimed that he was required to clean the floors and he had to wash down all the walls. She also stated that the appliances had not been cleaned and she found dishes in the dishwasher. The landlord also complained that there was garbage and cigarette butts found on the exterior of the property.
13. In support of her claim, the landlord submitted photographs showing that there was dirt on a shelf in a cupboard, a piece of paper on the floor, a bowl and mug in the dishwasher and some crumbs on the bottom of the oven. The photographs also show that there are cigarette butts outside the entrance to the unit and several bags of garbage.
14. According to the invoice, the landlord was charged \$175.00 for cleaning and \$25.00 to clean up the exterior of the apartment.

Cigarette odour removal

15. The landlord stated that her contractor informed her that the rental unit smelled like cigarette smoke after the tenant moved out.
16. In order to rid the unit of that smell, the landlord's contractor hired an ozone machine to treat the apartment. She was charged \$175.00 for the ozone treatment by her contractor.

Partial re-painting

17. The landlord testified that the rental unit was freshly painted just before this tenancy began and she claimed that although the tenant was in the unit for just over 1 month, she had to have several walls painted again after the tenant moved out.
18. She submitted photographs at the hearing showing that there were several marks on the walls and in one place the tenant had plastered a hole in the wall.
19. According to the submitted invoice, the landlord was charged \$750.00 for that work. The landlord stated that her contractor spent 4 hours, in total, painting the unit.

Replace exterior door and flush box

20. The landlord submitted 2 photographs at the hearing (■■ #10) showing the exterior door and the cover of the toilet tank. She pointed out that there is a dent in the exterior door and that the toilet tank cover is cracked.
21. According to her invoice, she was charged \$450.00 to replace the door and toilet tank and she was charged \$200.00 in labour to have those items installed.

22. The landlord stated that the rental unit was constructed in 2013 and both the door and toilet were installed at that time. The landlord stated that they were both in good condition when the tenant moved in.

Repair floor scratches

23. The landlord stated that there were some scratches in the laminate floor after the tenant vacated. Her contractor repaired those scratches with a marker pen and the invoice shows that the landlord was charged \$15.00. No photographs were submitted at the hearing.

Base administrative fee

24. The submitted invoice also shows that the landlord was charged a base administrative fee of \$150.00 by her contractor. She testified that this is an on-going agreement that she has with him and for every call that she makes to the contractor, no matter how insignificant, she is charged that base fee. She stated that the fee covers the contractor's time going to and from the unit and his time spent noting what work had to be done.

The Tenant's Position

25. The tenant stated that she had hired professional cleaners to clean the apartment before she vacated. She claimed that she returned to the unit after the cleaners had vacated and she stated that the unit appeared clean to her.
26. After examining the landlord's photographs, however, the tenant did concede that she had overlooked the dishes in the dishwasher and she also conceded that the oven and microwave were not completely clean.

Cigarette odour removal

27. The tenant stated that she did not smoke and she claimed that if she had visitors over who wished to smoke, she directed them to go outside.
28. The tenant stated that there was no smell of smoke in the unit after she vacated.

Partial re-painting

29. The tenant acknowledged that she had caused damage to one wall but she pointed out that she tried to repair it and all that was left for the landlord to do was a little bit of sanding and repaint the plastered area.
30. She also acknowledged that there may have been a few other marks or scuffs on the walls in other areas, but she argued that it should not cost \$750.00 to repair that damage.

Replace exterior door and flush box

31. Regarding the exterior door, the tenant denied that she had caused any damage to the door and she stated that she was wholly unaware that there was a dent in the door. She suggested it may have been there when she moved in.
32. With respect to the toilet, the tenant acknowledged that this was damaged during her tenancy. She stated that she had removed the toilet tank cover when the toilet had become clogged and her dog had knocked it onto the floor, causing the damage seen in the photograph.
33. The tenant complained that the costs that the landlord is seeking her are excessive and she argued that the whole toilet tank did not need to be replaced, just the cover.

Repair floor scratches

34. The tenant stated that there were already scratches on the floors when she moved into the unit.
35. She also pointed out that she did not live there long enough to have caused any significant damage to the floors. She stated that she only lived at the unit for 1 month and she was away for a full week during that time.

Base administrative fee

36. The tenant pointed out that the landlord's contractor's invoice shows that she was already charged for his labour to paint and carry out repairs.

Analysis

37. 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;

38. With respect to the cleaning, the photographs show that there are some dishes in the dishwasher and some crumbs or food in the oven. I am unable to discern any dirt in the photograph of the microwave and although there is a small paper tag on the floor in one of the photographs, I was not convinced that that establishes that the floors were dirty. Based on the evidence submitted at the hearing, I find that the landlord is entitled to compensation for 2 hours to clean the interior of the rental unit. According to the landlord's invoice, her contractor charged her a labour rate of \$50.00 per hour, and her claim for cleaning therefore succeeds in the amount of \$100.00. I agree with her that the exterior of the apartment also needed to be cleaned and I find she is entitled to the full \$25.00 she was charged here.
39. Regarding the smell of cigarette smoke in the unit, I find that the landlord has presented no credible evidence to establish that claim. The tenant testified that there was no smell when she vacated and she denied that she smoked in the unit during her tenancy. The only evidence the landlord presented was her claim that her contractor had told her that it smelled like cigarette smoke—but that is hearsay evidence. For that reason the landlord's claim does not succeed.

40. With respect to the repainting, I accept the landlord's evidence which shows that there are several marks and scuffs on the walls and that there was some damage which had been plastered by the tenant. Some of these marks, however, appear to be so minor that I would chalk them up to normal wear and tear. For the remainder, though, I agree with the tenant that the award sought by the landlord, based on this evidence, is excessive. The landlord stated that her contractor spent a total of 4 hours painting, and according to that invoice, the contractor charges \$50.00 per hour, so the labour charge here would be \$200.00. Presumably, the remaining \$550.00 the landlord was charged here was for materials. But I am of the view that it would not cost that much in materials. In my experience, a gallon of paint runs between \$30.00 and \$60.00 while brushes and rollers typically cost less than \$10.00.
41. I find that an award for \$200.00 for material and labour is more than adequate.
42. The tenant acknowledges that she had damaged the toilet tank cover and I accept the landlord's claim that the cover cannot be replaced and a new tank had to be purchased. The invoice submitted by the landlord does not have a breakdown of the separate costs of the door and the toilet tank, but on a review of several hardware websites, it looks like toilet tanks average around \$150.00 and I don't think it would take more than an hour to install. Given that toilets have an expected life span on 10 years, I find that the landlord is entitled to a depreciated award of \$100.00 for parts and labour.
43. The tenant denied that she had caused any damage to the door, and without an incoming or outgoing inspection report, I have to conclude that the landlord had not submitted enough evidence to establish that this damage was caused during this tenancy.
44. There was also not enough evidence submitted at the hearing to establish that there were any scratches on the floors, or, if there were, that they were caused during this tenancy. Hence, that portion of the landlord's claim does not succeed.
45. With respect to the base administrative fee, I agree with the tenant that the contractor's costs for his labour were already included on other lines on the invoice. It may have been cheaper for the landlord to hire a contractor who does not charge this flat-rate fee.

Decision

46. The landlord's claim for compensation for damages succeeds in the amount of \$363.80, determined as follows

- Cleaning \$100.00
 - Trash and pet waste disposal..... \$25.00
 - Partial re-painting \$200.00
 - Replace toilet flush box \$100.00
- Total \$425.00

Issue 2: Utilities - \$119.91

Relevant Submissions

The Landlord’s Position

47. The landlord stated that according to their rental agreement, the tenant was responsible for paying for the electricity bill and she was required to have an account set up in her name.
48. The landlord stated that the tenant never did have that account switched to her name and she was charged for the electricity usage while the tenant resided at the unit.
49. The landlord submitted a bill at the hearing (█ #10) showing that she was charged \$141.61 for electricity usage for the period from 13 May to 12 June 2019. She calculates that the tenant owes her \$119.91 for the period ending 06 June 2019.

The Tenant’s Position

50. The tenant acknowledged that she did not have the electricity account set up in her name and she agreed to pay the landlord the amount that she is seeking here.
51. The tenant stated that she had attempted to have the account set up online and mistakenly assumed that she had been successful.

Analysis and Decision

52. As there was no dispute regarding this matter, the landlord’s claim for a payment of utilities succeeds in the amount of \$119.91.

Issue 3: Refund of Rent - \$710.14

Relevant Submissions

The Landlord's Position

53. The landlord stated that the tenant paid her full rent of \$900.00, as required, for June 2019.
54. The tenant vacated the premises on 06 June 2019, as required by the termination notice she was issued, and the landlord calculates that she is owed a refund of rent in the amount of \$710.14 for the period from 07 June to 30 June 2019 as she was not residing at unit during that period.

The Tenant's Position

55. The tenant agreed with the landlord's position here.

Analysis and Decision

56. As there was no dispute regarding this matter, the landlord shall refund to the tenant \$710.14 of June's rent.

Issue 4: Security Deposit - \$650.00

57. According to the landlord's application, the tenant paid a security deposit of \$650.00 on 25 April 2019 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim for compensation for damages and utilities has partially succeeded, she shall retain that portion of the security deposit and return the remainder to the tenant.

Issue 5: Hearing Expenses

58. The landlord paid a \$20.00 fee to file this application and she claimed that fee as a hearing expense.

Analysis and Decision

59. Policy with this Section is that the party who receives an award shall have their hearing expenses awarded also.
60. As it is the tenant who receives an award as a result of this application, the landlord's claim for hearing expenses does not succeed.

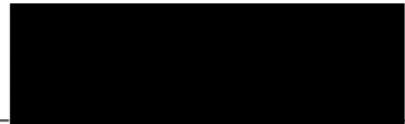
Summary of Decision

61. The tenant is entitled to the following:

a) Refund of rent	\$710.14
b) Refund of security deposit.....	\$650.00
c) LESS: Compensation for Damages	(\$425.00)
d) LESS: Utilities	(\$119.91)
Total Owing to Tenant	<u>\$815.23</u>

02 December 2019

Date



John R. Cook
Residential Tenancies Tribunal