

Residential Tenancies Tribunal

Decision 19-502-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:20 am on 05 August 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 respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for vacant possession of the rented premises, and
 - A payment of \$7650.00 in compensation for damages.

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

Preliminary Matters

6. The tenant was not present or represented at the hearing. I was able to reach him by telephone from the hearing room but he indicated that he did not wish to participate in 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 she has been properly served. The landlord submitted an affidavit stating that the tenant was served with notice of the hearing by registered letter and the associated tracking history shows that the tenant signed for that letter on 17 July 2019. He has had 18 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: Vacant Possession of Rented Premises

7. The tenant moved into the rental unit in July 2018 as a joint tenant and in January 2019 he took over as a sole leaseholder and entered into a new, 1-year lease with the landlord. A copy of the executed lease was submitted with the landlord's application (█ #1). The agreed rent is set at \$550.00 per month and it is acknowledged in the lease that the tenant had also paid a security deposit of \$550.00.
8. On 31 May 2019 the landlord went to the rental unit to pressure-wash the back deck in order to prepare it for staining. He testified that on that date he discovered that there were numerous damages caused to the property by the tenant. He stated that there was garbage piled up on the patio and wood and garbage behind the shed. He also stated that the exterior door had numerous punch marks on it and he complained that the weather stripping was damaged.
9. The landlord also stated that the tenant was not permitted to have pets in the unit but he has since discovered that he is keeping 6 dogs there. He stated that these dogs had ruined his back lawn and most of the grass is missing. He also submitted photographs showing that the tenant had nailed boards onto the patio steps and onto the underside of the shed so as to prevent his dogs from escaping the yard.
10. The landlord also complained that the tenant was responsible for causing a fire in the shed as he had been running electrical wires to it from the apartment. He stated that he provided the tenant with a new window and replacement siding as the tenant had promised to carry out repairs to the shed. He stated that although the tenant had put the siding onto the shed, it was installed poorly and had since blown away.
11. Because of this damage, on 16 June 2019 the landlord issued the tenant a notice to carry out repairs. The following repairs were required to be completed by 19 June 2019 (█ #3, #5):
 - Repair rear lawn
 - Reinstall siding on shed

- Clean stains on deck
 - Remove garbage
 - Repair entry door
 - Repair weather stripping
 - Remove boards from shed
 - Remove boards from stairs on patio
 - Repair broken fence
 - Remove fire pit
12. The landlord stated that he entered and inspected the unit on 21 June 2019 and he claimed that the tenant had made no effort to carry out any repairs. Accordingly, on that same day he served the tenant with a termination notice and a copy of that notice was submitted with his application (█ #2). That notice was issued under section 22 of the *Residential Tenancies Act, 2018* (notice where tenant's obligation not met) and it had an effective termination date of 27 June 2019.
13. The landlord stated that the tenant has not vacated as required and he is seeking an order for vacant possession of the rented premises.

Analysis

14. 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.

15. I accept the landlord's testimony in this matter and I agree with him that, on 31 May 2019, when the landlord visited the rented premises, the tenant was in breach of his rental agreement and in breach of his obligations as set out in statutory condition 2, quoted above. I also accept the landlord's claim that when he returned to the unit on 21 June 2019 none of the required repairs had been undertaken and the tenant had not come into compliance with statutory condition 2.
16. As the termination notice the landlord had issued to the tenant complies with the requirements set out in the *Act*, it is a valid notice.

Decision

17. The landlord's claim for an order for vacant possession of the rented premises succeeds.
18. The tenant shall 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.

Issue 2: Compensation for damages - \$7650.00

19. The landlord stated that as the tenant had not complied with his request that he carry out the above noted repairs he anticipates that he will have to carry out that work himself after the tenant moves out. He testified that he has also additionally discovered numerous damages to the interior of the rental unit which also need to be repaired.
20. With his application, the landlord submitted the following breakdown of the costs to carry out repairs to the rental unit (█ #19):

- Repair rear lawn \$1000.00
 - Replace siding on garage \$700.00
 - Deck stains \$100.00
 - Remove garbage in yard and garage \$350.00
 - Replace entry door \$1200.00
 - Replace cupboard door \$150.00
 - Replace bedroom door \$300.00
 - Remove smell of dogs \$500.00
 - Repair drywall and repaint \$2500.00
 - Repair closet shelf \$150.00
 - Replace closet door \$300.00
 - Remove graffiti from walls in garage \$200.00
 - Replace shelving in garage \$200.00
- Total \$7650.00

21. Regarding the lawn, the landlord testified that the lawn was in perfect condition when the tenant moved in and he submitted photographs (█ #13, #18) at the hearing showing that there are now patches where there is no grass whatsoever. The landlord stated that no work has yet been carried out on the lawn and no estimates or quotes were submitted showing the costs he is seeking here. He did submit an invoice from Green Lawn showing that he had hired them in 2018 to carry out annual lawn maintenance (█ #20), which included mowing, fertilizing, aeration, weed and insect treatment. That invoice shows that he was charged over \$1200.00 for their services in 2018.
22. With respect to the siding, the landlord stated that he has some siding on hand that he will use to complete the repair job to the shed. He is seeking \$700.00 but no receipts or quotes were submitted at the hearing.
23. The landlord stated that the tenant had been keeping garbage on the deck causing the deck boards to stain. He stated that pressure-washing those boards did not remove the stain and he stated that he now had to sand down that area before he stains the deck. He is seeking \$100.00 in compensation for his personal labour to carry out that work.
24. The photographs submitted by the landlord also show that there was a significant amount of garbage both inside and next to the shed as well as a number of broken boards and wooden pallets on the property. He also complained that there was a lot of dog feces on the grounds which also needs to be cleaned up. The landlord estimated that it would take him a couple of hours to remove that garbage and he is seeking compensation in the amount of \$350.00.
25. The landlord's photographs (█ #7, #8) also show that there are numerous dents in the entry door and the weather stripping is damaged as the tenant had been closing the door over dog leads. The landlord stated that this door was approximately 4 years old when the tenant moved in and it was in good condition at the time. The landlord thinks that this door now has to be replaced and he is

seeking \$1200.00 for the replacement costs. No receipt or quote was submitted at the hearing.

26. Photograph ■ #22 shows that the facing on one of the drawers was missing and the landlord is seeking \$150.00 for a replacement. No quotes or receipts were submitted at the hearing. The landlord stated that these cupboards were about 4 years old when the tenancy began.
27. The landlord also stated that one of the bedroom doors is missing altogether and the tenant had removed one of the closet doors in a bedroom and put it where the bedroom door used to be. He is seeking compensation in the amount of \$300.00 per door for the costs of purchasing and new one and installing it. No quotes or receipts were submitted at the hearing.
28. The landlord also stated that there is a smell of wet dog at the unit as well as a smell of smoke from drugs being smoked in the house. He also stated that he was sure that the tenant's dogs had urinated on the floors at the unit and he was concerned that the tenant had not been cleaning up after the dogs. In order to rid the unit of the smell the landlord stated that he is going to have to pay a company \$500.00 or more to come to his apartment. No quotes or receipts were submitted at the hearing.
29. With respect to painting, the landlord stated that the tenant had not caused any excess damage to the walls, but he did complain that there were several nail and screw holes in the walls that had to be repaired and that there were some dents noted as well. He also stated that the tenant's dogs had scratched up some of the walls and he submitted a photograph (■ #23) and pointed out that there are some scratches on the trim around a door leading to the bathroom. The landlord is seeking \$2500.00 for the costs he will incur to repaint the unit. No quotes or receipts were submitted at the hearing. The landlord stated that the unit was last painted in 2016 and that work was done by a professional painter.
30. Photograph ■ #24 shows that a piece of shelving is broken off in one of the rooms at the unit. The landlord is seeking \$150.00 to have that shelf repaired. No quote or receipt was submitted at the hearing. The landlord stated that these shelves were installed in 2015.
31. With respect to the shed, the landlord complained that the tenant had removed shelving from the shed which was installed when the shed was built. He is seeking \$200.00 for the costs of installing new shelves. He also submitted photographs showing the inside of the shed and pointed out that the tenant had spray-painted some of the walls. He is seeking an additional \$200.00 to paint the walls inside the shed to cover up those areas. No quotes or receipts were submitted at the hearing.

Analysis

32. 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;

33. The evidence submitted by the landlord at the hearing does establish that the tenant had caused damage to grounds, the shed, and to the interior of the rental unit. The evidence also establishes that there is a significant amount of garbage left on the grounds.

34. I also agree with the landlord that as the tenant had not complied with his request that he repair the damages he had caused it seems probable that he won't have these damages repaired before he is required to vacate the unit and I agree with the landlord that he will therefore incur costs to carry out these repairs himself.
35. However, determining an appropriate award as compensation for the damages caused by the tenant is hampered by the fact that none of these repairs have yet been carried out and the landlord has supplied this Tribunal with no evidence (e.g. estimates or receipts) to justify the costs he is seeking here. Furthermore, based on my experience in adjudicating damage claims of a similar sort, I believe that some of prices claimed by the landlord are excessive.
36. Nevertheless, I agree that the landlord is entitled to some compensation and based on previous decisions and factoring in depreciation and life expectancy, as well as the quality of evidence submitted by the landlord, I find that the following breakdown is reasonable:

• Repair rear lawn	\$200.00
• Replace siding on garage	\$100.00
• Deck stains	\$50.00
• Remove garbage in yard and garage	\$100.00
• Replace entry door	\$500.00
• Replace cupboard door	\$50.00
• Replace bedroom door	\$100.00
• Remove smell of dogs	\$100.00
• Repair drywall and repaint.....	\$100.00
• Repair closet shelf	\$50.00
• Replace closet door.....	\$100.00
• Remove graffiti from walls in garage	\$100.00
• Replace shelving in garage	\$200.00
 Total	<u>\$1750.00</u>

Decision

37. The landlord's claim for compensation for damages succeeds in the amount of \$1750.00.

Issue 3: Security Deposit - \$550.00

38. The tenant paid a security deposit of \$550.00 July 2018 and when he took over as sole leaseholder in January 2019 the landlord retained that deposit as security for any liabilities arising in this new tenancy. As the landlord's claim has been successful, he shall retain the security deposit as outlined in this decision and order.

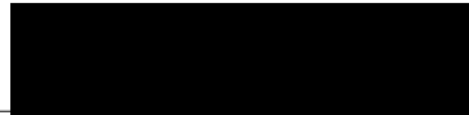
Summary of Decision

39. The landlord is entitled to the following:

- A payment of \$1200.00, determined as follows
 - Compensation for damages\$1750.00
 - LESS: Security Deposit..... (\$550.00)
 - Total Owing to Landlord\$1200.00
- 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.

21 August 2019

Date



John R. Cook
Residential Tenancies Tribunal