

Residential Tenancies Tribunal

Decision 19-0511-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:25 am on 20 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. She was represented at the hearing by [REDACTED] ([REDACTED]).
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$1648.14; and
 - Authorization to retain the security deposit of \$450.00.

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 decision is policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

7. The tenant was not present or represented at the hearing and I was not able to reach her by telephone from the hearing room. 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. The landlord submitted an affidavit with her application stating that the tenant was served, by e-mail, on 30 July 2019 and she has had 20 days to provide a response. The landlord also submitted a copy of that e-mail at the hearing and she submitted copies of additional correspondence she had with the tenant where she was using that same e-mail address. 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 her absence.

8. This is the second application filed by the landlord concerning this tenancy. A previous application (██████████) was heard on 03 July 2019 and as a result of that hearing, the landlord was awarded rent and late fees and she was authorized to retain the security deposit of \$450.00.
9. As the security deposit was addressed through application ██████████, I struck that item from the landlord's application.

Issue 1: Compensation for Damages - \$1648.14

Relevant Submissions

10. The landlord stated that she had entered into a 6-month, fixed-term lease with the tenant, beginning 01 January 2019, and a copy of that executed agreement was submitted at the hearing (████ #1). The agreed rent was set at \$875.00 and the tenant paid a security deposit of \$450.00.
11. The tenant fell into rental arrears in June 2019 and on 07 June 2019 the landlord served her with a termination notice. A copy of that notice was submitted at the hearing (████ #2). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 18 June 2019. The tenant moved on that day.
12. After the landlord regained possession of the apartment, she stated that she detected a very strong smell of cat urine in the unit. That smell was particularly strong in the entrance way, in the hallway, under the stairs and in the living room.
13. The landlord testified that when she inspected those areas where the smell was coming from she found that there was evidence of urine and crystalized urine on the floors, in the baseboards, in the mouldings and on the entrance door.
14. The landlord stated that she was unable to get rid of the smell with cleaners and she was required to remove the flooring and baseboards. She stated that the

urine had also made its way through to the subfloor, on the underlay and into some concrete.

15. The landlord stated that she was required to replace the flooring in the entrance area, the hallway and the living room. And before the flooring was laid, she also had to lay new subfloor in places and she had to seal some concrete with a special sealer. The landlord stated that she also had to cut out some drywall and she was required to replace the bottom plate of the entrance door.
16. In support of her claim, the landlord submitted photographs showing the areas that were soiled with urine and photographs showing the repairs in progress (█ ##5-20). As evidence of the smell of urine, the landlord also submitted into evidence a piece of drywall (█ #21), some hardware (█ #22), a piece of moulding (█ #23) and the bottom plate of the door (█ #24).
17. With respect to the costs the landlord is seeking here, she submitted receipts showing that she purchased new laminate flooring at a cost of \$486.68 (█ #29) and vinyl flooring at a cost of \$45.94 (█ #30). The underlay and reducers cost an additional \$134.44 (█ #28) and the materials for the new subfloor cost \$36.10 (█ #31). The materials for painting and for sealing the concrete floor cost \$101.23 (█ #23) and she purchased new mouldings for \$28.61 (█ #33). The receipts for the cleaning supplies total an additional \$70.18 (█ ##35-38).
18. In addition to the costs of the materials noted in the previous paragraph, the landlord is also seeking compensation for the labour required to carry out these repairs. She submitted a receipt (█ #25) showing that she was charged \$330.00 to have the flooring installed and a second receipt (█ #27) showing that she was charged \$203.70 to have the old flooring removed, to install a new subfloor and to remove and install baseboards and mouldings. She is also seeking \$174.60 in compensation for 9 hours of her own personal labour to clean and to paint those baseboards which were salvageable.
19. The landlord is seeking an order for a payment of \$939.84 for materials and \$708.30 in compensation for the labour to carry out these repairs.

Analysis

20. 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 wilful 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;

21. The preponderance of evidence submitted by the landlord establishes that the tenant had allowed her cat to urinate on the walls, floors and entrance door causing there to be a significantly foul odour in the apartment.
22. I accept the landlord's claim that she was unable to remove the smell merely by cleaning and that the floors, subfloors, mouldings and baseboards had to be replaced.
23. The landlord stated that the rental unit was constructed approximately 9 years ago and in awarding compensation for the damages caused by the tenant I have to take into account that the damage items had depreciated in value since that time.
24. According to the landlord's breakdown and receipts, she had spent \$45.94 for the vinyl flooring and she is seeking \$77.60 in labour costs. Given that a good quality vinyl floor has an expected life span of 10 years, I find that the landlord is entitled to compensation for the 1 remaining year in its lifespan: $\$12.35 ((\$5.94 + 77.60) \div 10 \text{ years})$.

25. Laminate flooring is expected to last 20 years, and based on the landlord's breakdown and receipts, I find that she is entitled to \$449.17 ((\$486.68 for materials and \$330.00 for labour) ÷ 20 years x 11 years remaining in lifespan).
26. Regarding the remaining costs for cleaning and cleaning supplies, sealing the concrete, salvaging the baseboards and reinstalling the subfloor, I find that the landlord is entitled to those costs. I calculate that total amount to be \$707.92 (a total claim of \$1648.14 less the undepreciated costs of vinyl floor (\$45.94), the laminate floor (\$486.68) and installation costs (\$77.60 + \$330.00)).

Decision

27. The landlord's claim for compensation for damages succeeds in the amount of \$1169.44 (\$12.35 + \$449.17 + 707.92).

Issue 7: Hearing Expenses

28. The landlord paid a \$20.00 fee to file this application and she submitted a receipt (█ # 42) showing that she had paid \$7.02 to develop photographs. As the landlord's claim has been successful, the tenant shall pay this hearing expense.

Summary of Decision

29. The landlord is entitled to the following:

a) Compensation for Damages.....	\$1169.44
b) Hearing expenses.....	\$27.02
Total Owing to Landlord	<u>\$1196.46</u>

03 January 2020

Date


 John R. Cook
 Residential Tenancies Tribunal