

Residential Tenancies Tribunal

Decision 19-0577-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 05 September 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. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate in the hearing.

Issues before the Tribunal

3. The landlords are seeking the following:
 - An order for compensation for damages in the amount of \$673.13;
 - An order for a payment of rent in the amount of \$900.00; and
 - An order for a payment of utilities in the amount of \$150.12;

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 decision is rule 29 of the Rules of the Supreme Court, 1986 and policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable 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) a respondent 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 respondent's absence so long as she has been properly served. The landlords submitted an affidavit with their application stating that the tenant was served with notice of the hearing on 25 July 2019 and she has had 41 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 her absence.

Issue 1: Compensation for Damages - \$673.13

Relevant Submissions

7. Landlord1 stated that she had entered into a monthly rental agreement with the tenant on 15 December 2018 and a copy of that agreement was submitted with the landlords' application (█ #1). The agreed rent was set at \$1400.00 per month and that rent was to be paid in 2 installments of \$700.00, due on the 1st and 15th of each month.
8. On 24 May 2019 the tenant informed the landlord that she would be vacating on 31 May 2019, but she did not move out until 02 June 2019. The landlords were able to secure new tenants on 01 August 2019.
9. With their application, the landlords had submitted the following breakdown (█ #2) of the costs to carry out repairs to the unit which were caused by the tenant during her tenancy
 - Basement repairs \$220.00
 - Bathroom door, mouldings, ceiling repairs \$203.14
 - Lawn mower \$249.99
 - Total \$673.13

Basement Repairs

10. Landlord2 stated that they had installed a new lift pump in the basement in October 2018, just 2 months before the tenant moved in. He stated that he informed the tenant that she was not to flush anything down the toilet, except toilet paper, but he claimed that on 2 occasions, once in February 2019 and once in May 2019, he had to call a plumber to the unit.
11. Landlord1 stated that on both occasions the tenant took responsibility for causing these plumbing issues and she had informed landlord1 that she would pay for the costs of hiring a plumber.

12. Landlord1 submitted copies of 2 receipts at the hearing (█ #3) showing that she was charged a total of \$220.00 for those 2 visits. She stated that the tenant never did pay for those repairs as promised.

Bathroom door, mouldings

13. Landlord2 stated that the doorjamb to the bathroom door was split and he suspected that it had been kicked in by the tenant. He submitted a copy of a receipt at the hearing showing that he was charged \$41.87 for the costs of purchasing doorjambs, a doorstop and brass hinges to carry out the repairs.
14. Landlord1 complained that all the mouldings from the main bedroom door as well as the mouldings from the downstairs bathroom door had been removed and she testified that she had afterwards found them in the garage and they were all chopped up. She stated that these mouldings had to be replaced and she submitted a copy of a receipt at the hearing (█ #8) showing that she was charged \$55.79 for new mouldings.
15. Landlord1 also complained that the tenant had allowed the bathtub to overflow and water had leaked through the floor and had damaged the ceiling in the room underneath. A photograph was submitted at the hearing showing that damage (█ #7). Landlord1 stated that she purchased crown mouldings to cover the damaged areas and she submitted a copy of a receipt (█ #9) showing that she had paid \$72.39 for those materials.

Lawnmower

16. Landlord1 stated that when the tenant moved into the unit, the landlords had provided her with a lawnmower so she could maintain the lawn on the property. She stated that after they had regained possession of the unit, they discovered that the lawnmower was missing. They contacted the tenant about that matter and she confirmed that she had accidentally removed the mower as she had people helping her remove items from the property when she was vacating.
17. The tenant had indicated to the landlords that she would return the mower to them, but she has not lived up to that promise. As such, the landlord's were required to purchase a new lawnmower and landlord1 submitted a copy of a receipt at the hearing (█ #10) showing they had paid \$227.70 for the replacement.
18. Landord1 pointed out that this replacement mower was an inexpensive model compared to the one the tenant had removed. She claimed that the missing mower originally cost her \$600.00 when she purchased it 5 years ago.

Analysis

19. 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;

20. The evidence submitted by the landlords shows that they had to carry out various repairs at the unit during the tenancy and after the tenant had vacated.
21. I accept their contention that the tenant had not heeded their instructions concerning the toilet and they were required to call a plumber on 2 separate

occasions to clear blockages as a result of the tenant's negligence. As such, I find that the landlords are entitled to compensation for the \$220.00 they had incurred to hire the plumber.

- 22. The landlords' evidence also shows that the mouldings were missing from 2 doors in the rental unit and I accept their claim that that tenant had removed those mouldings from the doors and had broken them up. I also accept their claim that they were required to repair a door jamb and a ceiling. Accordingly, I also find that the landlords are entitled to their receipted expenses totalling \$170.05 (\$41.87 + \$55.79 + \$72.39).
- 23. I also accept the landlords' claim that the tenant had taken their lawnmower and that they were required to purchase a replacement and I find that they are also entitled to the \$227.70 they had to pay for that replacement.

Decision

- 24. The landlord's claim for compensation for damages succeeds in the amount of \$617.75 determined as follows:

- Plumbing \$220.00
- Bathroom door, mouldings, ceiling repairs \$170.05
- Lawn mower \$227.70

- Total \$617.75

Issue 2: Rent - \$900.00

Relevant Submissions

- 25. With their application, the landlords submitted a breakdown of the rent payments they had received since the tenant moved in (█ #2).
- 26. According to those records, the tenant only paid \$500.00 of the 2nd rent payment which was due on 15 April 2019, leaving a balance of \$200.00 for that month.
- 27. Landlord1 also pointed out that she was not given a full, 1-month notice that the tenant was moving out and the unit was vacant for the month of June and July 2019. She is seeking a payment of \$700.00 in rent for the first half of June 2019.

Analysis

- 28. I accept the evidence of the landlords in this matter and I find that the tenant had not paid the full rent for April 2019 and she owes \$200.00 for that month.
- 29. I also agree with the landlords that since they were only given notice that the tenant was vacating on 24 May 2019 there was no way they would have been

able to secure new tenants for June 2019. As such, I agree with them that they are entitled to at least a half-month's rent for June 2019.

Decision

30. The landlords' claim for a payment of rent succeeds in the amount of \$900.00.

Issue 3: Utilities - \$150.12

Relevant Submissions

31. Landlord1 stated that according to their rental agreement, the tenant was responsible for paying for her own electricity. The tenant did initially have the account placed in her name, but on 09 May 2019 the electricity was disconnected from the tenant's unit because she had not been paying her bills.
32. Landlord1 stated that she contacted Newfoundland Power and on 12 May 2019 she had the electricity reconnected and the account was switched into her name. She testified that she had an agreement with the tenant that she would reimburse the landlords for the electrical charges they were billed after that date.
33. With their application, the landlords submitted a copy of a bill from Newfoundland Power (█ #12) showing that they were charged \$150.12 for the period from 14 May to 07 June 2019. Landlord1 testified that she had presented the tenant with this bill, but she has yet to reimburse her for those charges.

Analysis

34. I accept landlord1's evidence showing that the tenant was responsible for paying for her own electricity and that since 14 May 2019 the landlords have been billed for the tenant's usage. I also accept their claim that the tenant had not reimbursed the landlords as agreed. As such, their claim succeeds.

Decision

35. The landlords' claim for a payment of utilities succeeds in the amount of \$150.12.

Issue 4: Hearing Expenses

36. As the landlords' claim has been successful, the tenant shall pay their hearing expense of \$20.00 for the costs of filing this application.


Summary of Decision

37. The landlords are entitled to the following:

a) Compensation for damages	\$617.75
b) Rent.....	\$900.00
c) Utilities.....	\$150.12
d) Hearing Expenses	\$20.00
 Total Owing to Landlords.....	 <u>\$1687.87</u>

10 February 2020

Date



John R. Cook
Residential Tenancies Tribunal