

Residential Tenancies Tribunal

Decision 19-0585-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:00 pm on 09 October 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL and it was reconvened and adjourned 07 November 2019.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the landlord”, also participated.

Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$300.00.
4. The landlord is seeking an order for compensation for damages in the amount of \$418.00 and authorization to retain the security deposit.

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

Preliminary Matters

7. The landlord called the following witness:

- Brian Power (“█”) – tenant at █

Issue 1: Compensation for Damages - \$418.00

Relevant Submissions

The Landlord’s Position

8. The landlord and tenant entered into a monthly rental agreement on 01 August 2018. The agreed rent was set at \$600.00 and the landlord was paid a security deposit of \$300.00. Rent and the security deposit were paid directly to the landlord on the tenant’s behalf by the Department of Advanced Education, Skills and Labour (AESL).
9. In February 2019 the landlord gave the tenant a verbal termination notice that he was to vacate within 30 days. Sometime later, the tenant issued the landlord a written notice indicating that he was terminating the tenancy effective 30 April 2019. He vacated on that date.
10. The landlord stated that he rents 3 rooms at the rental unit and the 3 tenants share a common living area and kitchen. The tenant was sharing the unit with █ and █.
11. The landlord stated that the tenant had caused damages to the rental unit and with his application he submitted the following breakdown of the costs to carry out repairs (█ #1):
 - Flooring invoice \$138.00
 - Labour invoice \$200.00
 - Trash removal invoice \$40.00
 - Cleaning invoice \$20.00Total..... \$398.00
12. The landlord stated that just before the tenant moved in, he had put down new laminate flooring in the common area of the rental unit. He submitted a photograph at the hearing (█ #2) showing that a corner piece of one of the laminate boards had cracked off.
13. The landlord stated that he confronted the tenant, █ and █ about the floor, but none of them took responsibility for the damage. The landlord stated that a few days later █ and █ informed him that the tenant had caused the damage.
14. █ was called as a witness. He testified that he and █ were upstairs one day when they heard a loud bang. Some days later he noticed that his knife block was broken and a couple of days after that, he also noticed that the floor was

damaged. ■ stated that had the tenant thrown the knife block at the floor, it would have caused this damage to the floor.

15. The landlord submitted a quote at the hearing (■ #3) showing that he would be charged \$391.57, including tax, to have that floor repaired. \$202.50 would be for labour and \$138.00 would be for the costs of the replacement flooring. This quote included the costs of removing the damaged flooring and cleaning the area after the repairs were carried out.
16. The landlord stated that the floor has now been repaired. No receipt or invoice was submitted by the landlord.

The Tenant's Position

17. The tenant denied that he had damaged the flooring and he stated that he did not know how this damage had happened.
18. He claimed that during the period that he had lived there, there was always a 2 mm raised lip on that piece of flooring that he would often feel as he walked over it. He claimed that one day he was sweeping that floor and noticed that the piece had been cracked off.
19. The tenant suggested that the damage could have been the result of poor subfloor preparation or maybe it was a factory-damaged piece.

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 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

21. Based on the testimony and evidence submitted at the hearing, I find that the landlord had failed to establish, on the balance of probabilities, that the tenant had damaged the floor. The tenant denied that he had caused that damage and neither the landlord nor his witness saw the tenant damage the floor. As such, the landlord's claim does not succeed.

Decision


22. The landlord's claim for compensation for damages does not succeed.

Issue 2: Security Deposit - \$300.00

23. The tenant paid a security deposit of \$300.00 to the landlord on 07 August 2018. As the landlord's claim for compensation for damages has not succeeded, he shall refund the full amount of that deposit to the tenant.

30 March 2020

Date


John R. Cook
Residential Tenancies Tribunal