

Residential Tenancies Tribunal

Decision 19-0664-05

John. R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:10 am on 08 October 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 “tenant1” and “tenant2”, respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the landlord”, also participated. She was represented at the hearing by [REDACTED] (“[REDACTED]”).

Issues before the Tribunal

3. The tenants are seeking an order for a refund of the security deposit in the amount of \$1000.00.
4. The landlord is seeking the determination of the validity of a termination notice issued to her by the tenants on 04 July 2019, compensation for inconvenience in the amount of \$30.00, a payment of rent in the amount of \$4800.00, compensation for damages in the amount of \$2330.00, an order for a payment of utilities in the amount of \$60.00 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.

Issue 1: Compensation for Damages - \$2330.00

Relevant Submissions

The Landlord's Position

7. The landlord and tenants entered into a 1-year, fixed-term lease on 06 June 2018 and a copy of the executed lease was submitted at the hearing (█ #1). The agreed rent was set at \$1300.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$1000.00.
8. On 04 July 2019 tenant1 sent a text-message to the landlord stating that he was terminating their rental agreement, effective 06 August 2019. The tenants vacated on 03 August 2019. No walkthrough was conducted when the tenancy began or when it ended and no condition report was compiled.
9. The landlord stated that the tenants had caused significant damage to the unit during their tenancy and with her application she submitted the following breakdown of the costs to carry out repairs:

• Stain	\$50.00
• Door.....	\$100.00
• Closet casing.....	\$100.00
• Bathroom countertops	\$400.00
• Two dressers.....	\$200.00
• Table and chairs.....	\$1400.00
• New heater	\$80.00
Total	<u>\$7202.49</u>

Stain, Door, Closet Casings

10. The landlord stated that the tenants had requested permission to paint the master bedroom when they moved into the unit. She stated that in that room all the trim work and door facings were solid wood and had been stained.
11. The landlord complained that when the tenants had painted that room they had allowed the paint to transfer to the trim work and the door facings. In support of that claim the landlord submitted 31 photographs showing that trim work (█ #5).
12. The landlord is seeking \$50.00 for the costs of purchasing stain and \$200.00 to in compensation for her labour to re-stain the trim work and facings. No receipt was submitted at the hearing for the stain. The landlord stated that the master bedroom was last painted in 2017.

Countertop

13. The landlord submitted 2 photographs (█ #6, #7) showing the countertop in the bathroom and she pointed out that there was a chip taken out of it, near the edge.
14. The landlord stated that the countertop was covered with stick-on tiles but she cannot source any new replacement tiles and she claimed that the whole countertop now needs to be replaced. She submitted a quote (█ #8) from Kent showing that it would cost her \$1038.55 to have a new countertop installed. That work has not yet been carried out. The landlord stated that the countertop was 6 years old.

Two Dressers

15. The landlord stated that she had left 2 dressers in the master bedroom for the tenant's use during their tenancy. She stated that they were approximately 2 years old when the tenancy began.
16. The landlord claimed that the tenants were "hard on the furniture" and she complained that there were numerous nicks and "bits of damage" which now had to be repaired. No photographs were submitted at the hearing.
17. The landlord is seeking \$200.00 for the costs of carrying out repairs. No receipts or quotes were submitted at the hearing and the landlord stated that this work has not yet been completed.

Table and Chairs

18. The landlord stated that the tenants were also provided with a kitchen table and 6 chairs. She stated that they were only 2 years old.
19. The landlord submitted photographs at the hearing (█ #9) showing the condition of that table set after the tenants moved out and again complained that these pieces of furniture had been "manhandled". She pointed to numerous dents and nicks in the table and on the chairs, though she conceded that 2 chairs were left in good condition.
20. The landlord is seeking the costs of replacing the tables and chairs and she submitted a quote (█ #10) showing that a replacement set would cost \$1609.99.

New Heater

21. The landlord submitted a photograph showing a baseboard heater that was in the kitchen (█ #11). She pointed out that the corner casing on one side of the heater was hanging off and she stated that it had been kicked off by the

tenants. She claimed that this corner piece cannot be screwed back in because the place where the screws go in is also cracked.

22. The landlord stated that the heater was newly installed in January 2019 and she submitted a copy of a receipt showing that she had paid \$72.44 for that heater. She is looking for the costs of replacing that heater again.

The Tenants' Position

Stain, Door, Closet Casings

23. Tenant2 stated that the walls in that bedroom were painted 5 different colours when she moved in and she claimed that she had asked the landlord to re-paint that room. Tenant2 stated that the landlord instructed her to paint it herself.
24. Tenant2 acknowledged that she did paint the master bedroom, but she pointed out that she is not a professional painter and there were some minor slips with her paint brush.
25. The photographs submitted by the landlord also show that there are areas where there is purple and green paint on the trim work and facing and tenant2 stated that that paint was already there when she moved in.
26. Tenant1 submitted his own photographs at the hearing (████ #3) and he argued that they show that they had actually done a good job in painting that bedroom.

Countertop

27. Tenant1 acknowledged that he had caused the damage to the countertop shown in the landlord's photographs. He claimed that he had accidentally bumped up against the counter after he had taken a shower. He claimed that the way the tiles were laid, the edge was hanging over the top of the vanity. Tenant2 argued that this sort of damage should be considered normal wear and tear.
28. Tenant1 also pointed out that the countertop had already suffered water damage when they had moved in and he stated that this damage is also visible in the landlord's photographs and in the tenants' photographs (████ #5)
29. Tenant1 stated that the tiles on the countertop were floor tiles and were not intended to be used on countertops. Tenant2 further argued that these tiles are cheap and the landlord is seeking costs for replacing those tiles with a proper laminate countertop which is much more expensive.

Two Dressers

30. The tenants denied that they had caused any damage to the dressers and they submitted photographs of these dressers from the day they vacated showing that they were in good condition (█ #7).
31. Tenant2 stated that each day during their tenancy they would wake in the morning, get dressed, and they would not be in the bedroom at all during the day. She also stated that only her and her husband lived at the rental unit. Tenant2 also claimed that she had informed the landlord that she had her own furniture when she moved in, and that if the landlord wished to leave behind any of her own furniture, the tenants would not be responsible for it.

Table and Chairs

32. The tenants submitted their own photographs showing this furniture (█ #7) and they claimed that these pieces of furniture were left in good condition.

New Heater

33. The tenants denied that they had damaged the heater and they submitted their own photographs of the heater at the hearing (█ #8). They testified that these photographs were taken the day they had vacated and they show that the corner cover was intact and in place on that day.

Analysis

34. 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;

35. Regarding the trim work and facings, the landlord's photographs do indeed show that some of the paint that the tenants had applied to the walls had transferred to the trim work and facings. I also agree with the landlord that she should be compensated for her time having to re-stain those areas. Given that some of the trim already had been painted other colours, for which the tenants are not responsible, I find that compensation for 5 hours of her personal labour is reasonable.
36. Policy with this Section is that a landlord may claim \$97.00 in compensation for 5 hours of their personal labour (\$19.40 per hour x 5 hours).
37. With respect to the countertop, I find that the landlord has failed to establish that this damage was caused through a deliberate or negligent act, and I accept tenant1's claim that he merely bumped into the countertop accidentally. I also agree with the tenants that these tiles were already suffering water damage and that they soon would have needed replacement anyhow. For those reasons, the landlord's claim does not succeed.
38. Regarding the 2 dressers, the landlord submitted no evidence showing that this furniture was damaged and no evidence showing the costs to carry out repairs. The tenants did submit photographs at the hearing, and I cannot discern any damage in them. For those reasons, the landlord's claim does not succeed.
39. Regarding the table and chairs, I was not persuaded by the landlord's evidence that these items needed to be replaced. Her photographs do show that there were some minor nicks and dents, but a lot of this could be chalked up to normal

wear and tear. Furthermore, as there was no report of an incoming inspection, I have no way of determining whether these nicks were caused by the tenants or whether they were there when the tenants moved in. As such, this claim also fails.

- 40. Regarding the heater, the landlord's evidence shows that it was broken and the tenant's evidence shows that it was not. Without a report of an outgoing inspection, I do not have enough evidence to make a determination as to whether it was damaged during this tenancy by the tenants or whether it occurred after they had moved out. As such, the landlord's claim for the replacement costs of the heater does not succeed.

Decision

- 41. The landlord is entitled to the following in compensation for damages:

- Stain trim work..... \$97.00
- Total \$97.00

Issue 2 Rent: \$4800.00

- 42. The landlord stated that the original lease was set to expire on 31 June 2019 [sic.]. She stated that she had entered into a verbal agreement with the tenants that the lease would run for an additional 6 months and as evidence of this, she pointed out that the expiration date of the lease was changed from 31 June 2019 to 06 June 2019.
- 43. And as further evidence of this 6-month agreement, the landlord submitted an affidavit from [redacted] ([redacted] #1) in which he writes that he "heard the 6 month agreement in place on speaker phone by [redacted]".
- 44. This verbal, 6-month lease was to run from 06 June 2019 to 05 December 2019 and it was agreed that the rent would be reduced from \$1300.00 to \$1200.00 per month during this period.
- 45. Despite that agreement, the tenants had sent the landlord a text-message on 04 July 2019 informing her that they were terminating their rental agreement effective 06 August 2016.
- 46. The landlord stated that after she received notice that the tenants were moving out, she immediately started to advertise the unit for rent and for sale and copies of those advertisements were submitted at the hearing ([redacted] #4).
- 47. The landlord complained that although she had people interested in viewing the property during July 2019, the tenants would lock her out of the rental unit,

preventing viewings, and they also decided to take a vacation for 2 weeks during this month.

48. The landlord stated that she has been unable to rent or sell the property and she has been losing rental income since the tenants vacated. The landlord is seeking an order for a payment of rent in the amount of \$4800.00 for the remaining 4 months of the 6-month term the tenants had committed to, the period from 06 August to 05 December 2019.

The Tenants' Position

49. The tenants denied that they had entered into a new, 6-month lease with the landlord. Tenant2 stated that the reason the expiration date of lease was changed from 31 June to 06 June 2019 was to correspond to the rental periods, which ran from the 6th day of each month to the 6th of the following month.
50. Tenant2 stated that after the lease expired on 06 June 2016, it was running on a month-to-month basis and they were now only required to give the landlord 1 month's notice.
51. Tenant1 submitted a copy of the text-message he had sent to the landlord on 04 July 2019 and he pointed out that his notice was accepted by the landlord. In response to his message she writes: "Okay. If you can leave the key only myself will the have access...thank you".
52. The tenants also claimed that they were cooperative with the landlord during July 2019 when she was conducting viewings and in support of that claim they submitted copies of text-messages between them and [REDACTED] ([REDACTED] #11) in which they were arranging viewing times.
53. Tenant2 did acknowledge that they had taken a 2-week vacation in July 2019, but she argued she was allowed to take a holiday whenever she pleased. Nevertheless, the tenants' daughter was residing at the unit during that period and they submitted copies of further text-messages ([REDACTED] #10) between the landlord and their daughter showing that she was also cooperating with the landlord is arranging viewings.
54. Tenant2 also claimed that, 5 days after they had moved out, new tenants moved into the unit and are currently residing there now.

Analysis

55. The burden of proof lies with a landlord to establish the terms of a rental agreement. Although verbal contracts are legally binding, it is always prudent to commit agreements to writing in case a dispute arises.

56. I find that the landlord had failed to produce enough evidence to establish, on the balance of probabilities, that the tenants had agreed to an additional 6-month term after the original lease had expired.
57. The landlord argued that as evidence of their agreement, she had changed the expiration date of the lease to 06 June from 31 June 2019. I was unable to follow the landlord's chain of thought in that argument and it seems to make more sense that the date was changed to correspond to the rental payment periods, as tenant2 argued.
58. In the submitted copies of the text-message exchanges with the landlord from July 2019 (█ #2, #10, #11), no mention is made by the landlord that the tenants had not honoured their new agreement. In those exchanges, it appears that the landlord had accepted, or at least had not objected to, the termination notice that was issued to her and she then began making arrangements to find new tenants or a buyer.
59. In the landlord's submitted copy of a text-message exchange with tenant1 in August 2019 (█ #2), after the tenants had moved out, and after their relationship had severely deteriorated, the landlord does mention that the tenants had broken their agreement that they would stay on at the unit for an additional 6 months. But in response, tenant1 points out that they had only agreed to rent from month-to-month and that they had not signed any written agreement. That exchange does not establish that there was a lease agreement. It only establishes that the parties were disagreeing as to whether such an agreement was in place.
60. I also attach little weight to the affidavit from █. █'s statement is bereft of particulars and it conflicts with the landlord's own text-message evidence in which tenant1 writes that the agreement was running month-to-month.
61. Given the evidence and given the testimony of the tenants at the hearing, I conclude that there was insufficient proof to establish that a 6-month lease was in place.
62. The evidence submitted at the hearing also does not bear out the landlord's claim that the tenants had locked her out of the rental unit or that they were uncooperative when she wished to show the unit to prospective new tenants and buyers
63. For those reasons, I find that the landlord's claim for rent for the period from 06 August to 05 December 2019 does not succeed.

Decision

64. The landlord's claim for a payment of rent does not succeed.

Issue 3: Utilities - \$60.00

Relevant Submissions

The Landlord's Position

65. The landlord stated that after the tenants vacated she returned to the unit on 06 August 2019 and took possession.
66. She stated that she discovered that the thermostat for one of the rooms was "on maximum bust". She also claimed that she was unable to turn the heat off for 2 weeks as the "off" marking had been rubbed off the dial. She later changed that testimony and stated that she had the heat turned off 3 or 4 days later.
67. The landlord is seeking \$60.00 for the extra electricity costs she had incurred during the month of August 2019. No electricity bill was submitted at the hearing.

The Tenant's Position

68. The tenants both stated that they had no issues with the heating after the landlord had installed the new heaters in January 2019.
69. Tenant2 submitted a Newfoundland Power bill at the hearing (█ #9) for the period from 09 July to 06 August 2019. She pointed out that the account was cancelled on 06 August 2019, the day the tenancy ended, and that she was charged \$70.61 for that period.

Analysis

70. The tenancy ended on 06 August 2019 and the bill submitted by the tenants show that they had the electricity account in their name to that point. They are not responsible for electricity consumption at the unit after that date.
71. No evidence was presented by the landlord to corroborate her claim that the thermostat was damaged by the tenants or that she had incurred any extra electricity charges as a result. As such, her claim does not succeed.

Decision

72. The landlord's claim for a payment of utilities does not succeed.

Issue 4: Compensation for Inconvenience - \$30.00

73. The landlord stated that she is seeking \$30.00 in compensation for preparing for this hearing.

74. The landlord also submitted a piece of paper at the hearing (█ #15) on which she had written:

- Application \$20.00
- Pictures \$30.00
- Copies \$30.00
- 15 hours 15 x 20 = \$300.00
- Total: \$380.00

75. In support of her claim, the landlord submitted a copy of a receipt (█ #14) showing that she was charged \$26.64 to develop photographs.

Analysis

76. Policy with this Section is that the party that receives an award will have their hearing expenses awarded also.

77. In this case, as it is the tenants who are receiving the award, the landlord has no claim for her hearing expenses.

Decision

78. The landlord's claim for hearing expenses does not succeed.

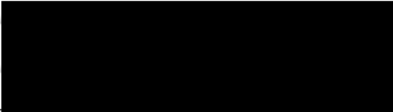
Issue 5: Security Deposit - \$1000.00

79. The tenants paid a security deposit of \$1000.00 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim for damages has been partly successful, she shall retain \$97.00 of that deposit and return the remaining portion, as follows:

- Refund of Security Deposit..... \$1000.00
- **LESS: Compensation for Damages..... (\$97.00)**
- Total Owing to Tenants **\$903.00**

30 March 2020

Date


John R. Cook
Residential Tenancies Tribunal