

## Residential Tenancies Tribunal

Decision 19-0681-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:20 am on 29 January 2020 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 compensation for damages in the amount of \$5422.95;
  - An order for a payment of utilities in the amount of \$775.17; and
  - Authorization to retain the security deposit of \$1800.00.

### 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 section 22 of the *Residential Tenancies Act, 2018*, policy 9-3: Claims for Damage to Rental Premises and rule 29 of the *Rules of the Supreme Court, 1986*.

### Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach him 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 respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he has been properly served. The landlord submitted an affidavit with her application stating that the tenant was served with notice of this rescheduled hearing, by e-mail, on 07 January 2020 and he has had 21 days to provide a response. The landlord had also submitted a copy of that e-mail as well as a copy of a text-message she had received from the tenant in which he provides these e-mail addresses. 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: Compensation for Damages - \$5422.95**

**Relevant Submissions**

7. The landlord stated that she had entered into a monthly rental agreement with the tenant on 08 May 2019. The agreed rent was set at \$2000.00 per month and it is acknowledged in the rental agreement that the tenant had paid a security deposit of \$1500.00.
8. The landlord stated that she carried out an inspection of the rental unit on 17 July 2019 and she noted that the house was in disarray and that the tenant had been keeping 2 pets at the unit, in contravention of their rental agreement. She stated that she issued him a notice to effect repairs and that he was to come into compliance by 24 July 2019. A second inspection was carried on 25 July 2019 and the landlord testified that the tenant had not completed the repairs as requested.
9. On that same day, the landlord issued the tenant a 5-day notice of termination. He vacated on 06 August 2019.
10. The landlord testified that the tenant had caused some damages to the rental unit and she submitted the following breakdown of the costs to carry out repairs (█ #2):

• Repair hardwood floors .....	\$4749.50
• Clean furniture .....	\$500.00
• Replace wood door.....	\$173.45
 Total.....	 <u>\$5422.95</u>

Repair Harwood Floors

11. The landlord stated that floors in the main area of the house were hardwood and those floors were installed in 2017.

12. The landlord complained that, contrary to their rental agreement, the tenant had been keeping a pet dog at the unit and she testified that this dog's nails had caused damage to the hardwood floors. In support of that claim, the landlord 2 photographs (█ #17, #18) showing scratches in these floors, as well as an e-mail from her cleaner (█ #16), dated 29 January 2020, in which he states that there are severe scratches on the floors in the unit.
13. The landlord also submitted a quote from The Carpet Factory (█ #3) showing that it would cost \$4749.50 to have the floors sanded and refinished. That work has not yet been carried out.

#### Clean Furniture

14. Besides the dog, the landlord stated that the tenant had also been keeping a pet cat in the unit. She complained that there was a significant amount of animal hair and dander on her furniture after the tenant moved out and she was required to have all of her furniture professionally cleaned. She submitted an invoice at the hearing (█ #8) showing that she was charged \$554.67 to have that work carried out.
15. In support of her claim, the landlord submitted photographs showing the upholstery on a couch (█ #19, #20) and she pointed out that it was soiled. She also submitted photographs showing the contents of the cleaner's vacuum cleaner (█ #4, █ #5) and she stated that animal hair can be seen in its contents.

#### Replace Door

16. The landlord also complained that the tenant's dog had damaged the wooden door that leads from the garage to the house. She stated that the tenant would kennel this dog in the garage when he was not home and the dog had chewed and scratched that door. In support of her claim, the landlord submitted 6 photographs showing this damage (█ #9, #10, ##21-24).
17. The landlord stated that this door has not yet been replaced, but she submitted a quote (█ #11) showing that a replacement would cost \$173.45. The landlord stated that this door was installed in 2002.

### **Analysis**

18. 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*

19. With respect to the floors, I find that there was insufficient evidence presented at the hearing to justify an award for almost \$5000.00 in damages. The landlord only presented 2 close-up photographs at the hearing showing scratches on the floors and I am of the view that more comprehensive photographic or video evidence is needed to establish that the entirety of the floors need to be refinished. I also note that there was no report of an incoming or outgoing inspection.
20. Regarding the cleaning, I accept the landlord's evidence which shows that she was charged \$554.67 to have her furniture cleaned, and her evidence does show that there was pet hair on her furniture. Hence, that claim succeeds.

21. I also accept the landlord's evidence which shows that the tenant's dog had caused significant damage to the door to the garage and I find that she is entitled to the costs of having that door replaced. Interior doors have an expected lifespan of 20 years and given that this door was already 17 years old when the tenancy ended, I find that the landlord is entitled to a depreciated award of \$26.02 ( $\$173.45 \div 20 \text{ years} \times 3 \text{ years remaining in lifespan}$ ).

### Decision

22. The landlord's claim for compensation for damages succeeds in the amount of \$580.69 determined as follows:

• Furniture cleaning.....	\$554.67
• Replace door.....	\$26.02
Total.....	<u>\$580.69</u>

### Issue 2: Utilities - \$775.17

#### Relevant Submissions

23. The landlord testified that as a condition of their rental agreement, the tenant was required to have the electrical and internet accounts placed in his name when the tenancy began. She stated that the tenant did not take over these accounts and the landlord continued to be charged for these utilities during this tenancy.

24. The landlord submitted 2 bills from Newfoundland Power (█ #12, #13) showing that the tenant owes \$620.66 for his electricity usage and a bill from Bell Aliant (█ #14) showing that he owes \$152.12 for cable and internet.

#### Analysis

25. I accept the landlord's claim that the tenant had not taken over the utility bills as required and her evidence shows that the tenant owes her \$772.78 ( $\$620.66 + \$152.12$ ).

### Decision

26. The landlord's claim for a payment of utilities succeeds in the amount of \$772.78.

### Issue 3: Security Deposit

27. The landlord stated that the tenant had paid a security deposit of \$1500.00 in early May 2019 and receipt of that deposit is acknowledged in the submitted rental agreement (█ #1). As the landlord's claim has been partially successful,

she shall return \$146.53 of the security deposit to the tenant, determined as follows:

- a) Security Deposit ..... \$1500.00
- b) LESS: Compensation for Damages..... (\$580.69)
- c) LESS: Utilities..... (\$772.78)
  
- Total Owing to Tenant ..... \$146.53

05 May 2020

\_\_\_\_\_  
Date



\_\_\_\_\_  
John R. Cook  
Residential Tenancies Tribunal