

## Residential Tenancies Tribunal

Decision 19-0705-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:25 am on 29 October 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. 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 a return of missing possessions valued at \$450.00;
  - An order for compensation for damages in the amount of \$2211.50;
  - An order for a payment of rent in the amount of \$800.00; and
  - Authorization to retain the \$250.00 security deposit.

### 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 case is section 10 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 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 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 landlord submitted an affidavit stating that the tenant was served with notice of the hearing, by e-mail, on 24 September 2019 and she has had 34 days to provide a response. The landlord also submitted a copy of that e-mail as well as other e-mail exchanges she had had with the tenant at that 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.

## Issue 1: Missing Possessions - \$450.00

### Relevant Submissions

7. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 August 2018 and a copy of the executed lease was submitted with her application (█ #1). The agreed rent was set at \$800.00 per month and the landlord testified that the tenant had paid a security deposit of \$300.00. The landlord stated that the rent and security deposit was paid on the tenant's behalf by the Department of Advanced Education, Skills and Labour (AESL).
8. The landlord stated that the tenant sent her a text-message on 01 July 2019 informing her that she was vacating on 31 July 2019 and the landlord regained possession of the property on that date.
9. The landlord testified that the tenant was supplied with a microwave and dehumidifier for her use during her tenancy. She complained that these 2 items were missing from the unit after the tenant vacated.
10. The landlord stated that she has replaced the microwave and she submitted a receipt with her application (█ #3) showing that she was charged \$57.47 (\$49.97 + tax) for a replacement. The landlord has not replaced the dehumidifier as she decided to install an air exchanger in the unit after tenant vacated. She is seeking \$400.00 in compensation for the missing dehumidifier. No receipt or quote was submitted at the hearing.

## Analysis

11. I accept the landlord's claim that the tenant had removed the microwave and dehumidifier after she had vacated. I also accept the landlord's claim that she had replaced the microwave and her evidence shows that she was charged \$57.47. As such, her claim for the replacement of that item succeeds in that amount.
12. No evidence was submitted to the Board establishing the costs of the dehumidifier. As such, that claim does not succeed.

## Decision

13. The landlord's claim for compensation for missing possessions succeeds in the amount of \$57.47.

## Issue 2: Compensation for Damages - \$2211.50

### Relevant Submissions

14. The landlord stated that there were significant damages caused to the unit after the tenant moved out and she submitted the following breakdown of the costs to carry out repairs:

- Replace Stove ..... \$723.35
- Replace Lock..... \$57.49
- Re-paint Apartment ..... \$600.00
- Clean Sofa, Chair, Carpet ..... \$250.00
- Replace Window..... \$500.00
- Seed and Fertilizer ..... \$50.00
- Furniture Removal..... \$30.00
  
- Total ..... \$2210.84

### Replace Stove

15. The landlord stated that the stove was "rotten" and that there was "stuff burnt on it" and it could not be cleaned. No photographs or videos were submitted at the hearing showing the stove.
16. The landlord stated that she had to have the stove replaced. No receipt was submitted at the hearing, but the landlord submitted a copy of her Visa statement (█ #4) showing that she was charged \$753.23. She also submitted a delivery slip (█ #5) to establish that a stove was delivered to her property.

17. The landlord stated that the stove was 3 to 4 years old when the tenant moved in.

#### Replace Locks

18. The landlord also complained that the tenant had not returned the keys to her before she vacated. She stated that she therefore had to change the locks as she no longer wanted the tenant to have access to the apartment. She submitted a copy of a receipt (█ #3) showing that she was charged \$57.45 for a replacement lock.

#### Re-paint Apartment

19. The landlord stated that the tenant had been smoking in the rental unit and after she had vacated the landlord claimed that there was a strong smell of smoke in the apartment and everything had turned yellow. In support of that claim the landlord submitted a photograph showing that there was a cigarette butt on the floor (█ #6), another photograph showing that a light fixture was yellowed (█ #7) and a third photograph showing that there were cigarette ashes in the kitchen sink (█ #8).
20. The landlord stated that she had hired cleaners to wash down all the walls in the apartment and she testified that she was charged \$170.00 to have that work completed. No receipt was submitted at the hearing. She also stated that her brother-in-law repainted the master bedroom. He was not paid for that work and no receipt was submitted showing the costs of paint.

#### Clean Sofa, Chair, Carpet

21. The landlord stated that she has not cleaned the sofa, chair and carpet in her apartment yet and no testimony or evidence was submitted by her concerning this portion of her claim.

#### Replace Window

22. The landlord acknowledged that, when the tenant moved in, one of the windows was not working properly and it was difficult to close and lock. However, when the tenant moved out, it turned out that the only thing keeping the window in place were the locks. When the window is unlocked, it falls out of its frame. The landlord submitted a photograph of that window at the hearing (█ #9).
23. The landlord stated that she has since had that window repaired and she thinks she was charged around \$100.00. No receipt was submitted at the hearing. The landlord stated that this window was approximately 15 years old.

### Seed and Fertilizer

24. The landlord stated that the tenant had been keeping 3 dogs in her apartment and the tenant had let them into the backyard. The landlord claimed that these dogs had torn up all of her flowers and her lawn was brown as a result of the dogs running over it. No photographs were submitted at the hearing.
25. The landlord stated that she had spent 2 hours re-fertilizing and re-seeding the lawn. No receipts were submitted for these supplies.

### Furniture Removal

26. The landlord stated that the tenant had left behind a mattress, box spring, a sofa and a loveseat and she had those items were removed by the town after the tenant vacated. Her Visa statement shows that she was charged \$25.00 to have those items removed during bulk garbage collection.

### **Analysis**

27. 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*

28. With respect to the stove, I find that the landlord has not presented enough evidence to establish that it had to be replaced. No photographs were submitted at the hearing showing the condition of the stove after the tenant moved out and there was no report of an incoming or outgoing inspection. As such, that part of her claim does not succeed.
29. Regarding the costs for changing the locks, that claim also does not succeed. Policy with this Section is that a landlord cannot charge the tenant for the replacement of locks unless they were damaged by the tenant or the tenant's visitors. Replacing locks is considered a cost of doing business for a landlord. When a rental agreement is terminated and another tenant is taking occupancy of the unit, the landlord is expected to change locks for the security of the new tenant.
30. With respect to the painting, the landlord submitted no receipts showing that she had incurred any costs to have the master bedroom painted. As such, that portion of her claim also fails.
31. No evidence was presented at the hearing regarding the cleaning of the sofa, chair or carpet, so that claim fails too.
32. With respect to the window, the landlord conceded that it was not functioning properly when the tenancy began and I find that she has failed to produce any evidence to establish that the deterioration in the functionality of the window was the result of any deliberate or negligent act on the part of the tenant. The landlord has also failed to establish the costs that she is seeking here. As such, this claim does not succeed.

33. With respect to the lawn, no photographs were submitted showing any damage and there was no report of an incoming or outgoing inspection. No receipts were submitted either. Hence, this part fails too.
34. Regarding the bulk garbage removal, I accept the landlord's evidence showing that she had been charged \$25.00 to have the some furniture removed. As such, that portion of her claim succeeds.

### **Decision**

35. The landlord's claim for compensation for damages succeeds in the amount of \$25.00 for the costs of bulk garbage removal.

### **Issue 3: Rent - \$800.00**

#### **Relevant Submissions**

36. The landlord pointed out that the tenant was in a fixed-term lease that was set to expire on 31 July 2019. She complained, however, that the tenant was required to give her at least 2 month's notice that she was terminating her rental agreement on that expiration date.
37. The landlord stated that she did not try to rent the unit for August 2019 because of the damages caused by the tenant. She stated that she did start advertising the unit in July 2019, but this was for occupancy beginning in September of October 2019.
38. The landlord is seeking a payment of \$800.00 in rent as the unit sat vacant during the month of August 2019.
39. The landlord also stated that in September 2018 AESL had only sent her \$750.00 in rent. She is also seeking the remaining \$50.00 that was owing from that month.

#### **Analysis**

40. With respect to rent for September 2018, I accept the landlord's testimony in that matter and I find that the tenant owes \$50.00 in rent for that month.
41. I also agree with the landlord that the *Residential Tenancies Act, 2018* does require that in a fixed-term lease the tenant is required to provide at least 2-month's notice that she is terminating her agreement. If the tenant wished to terminate her agreement on 31 July 2019, she ought to have given notice sometime prior to 01 June 2019.

42. Where a tenant does not terminate a rental agreement in accordance with the *Residential Tenancies Act, 2018*, she is considered to have abandoned the property and she is liable for any damages that are caused as a result of that abandonment, including a loss of rental income.
43. However, statutory condition 4, set out in section 10 of this *Act* states:

***Statutory conditions***

*10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:*

...

*4. Mitigation on Abandonment - Where the tenant abandons the residential premises, the landlord shall mitigate damages that may be caused by the abandonment to the extent that a party to a contract is required by law to mitigate damages.*

44. This statutory condition requires that landlords take all reasonable steps to minimize their loss of rental income when a tenant abandons rented premises. This would typically mean that the landlord would be advertising the rental unit for occupancy as soon as possible.
45. However, in this case, the landlord admitted that she was making no attempts to rent the unit for August 2019, but only for September or October 2019. Of course, the landlord argued that the reason she did not advertise for August 2019 was because she had to repair damages caused by the tenant. But, except for the bulk garbage removal, the landlord has presented almost no evidence to corroborate that claim or to corroborate her claim that the unit was un-rentable. As such, her claim for rent for August 2019 does not succeed.

**Decision**

46. The landlord's claim for a payment of rent succeeds in the amount of \$50.00.

**Issue 3: Security Deposit**

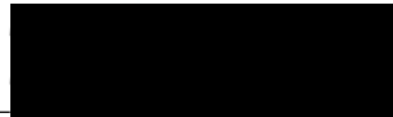
47. The landlord testified that AESL paid to her, on the tenant's behalf, a security deposit in the amount of \$300.00. As the landlord's claim for missing possessions, damages and rent has been partly successful, that deposit is disposed of as follows:



- a) Refund of Security Deposit .....\$300.00
- b) LESS: Missing Possessions..... (\$57.47)
- c) LESS: Damages..... (\$25.00)
- d) LESS: Rent ..... (\$50.00)
- e) Total Owing to Tenant.....\$167.53

06 April 2020

\_\_\_\_\_  
Date



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John R. Cook  
Residential Tenancies Tribunal