

Residential Tenancies Tribunal

Decision 19-0745-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am on 07 November 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$3313.60,
 - An order for a payment of rent in the amount of \$800.00;
 - Authorization to retain the security deposit of \$400.00; and
 - An order for a payment of hearing expenses in the amount of \$20.00.

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 are section 21 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 tenants were not present or represented at the hearing and I was unable to reach them 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlord submitted affidavits with her application stating that the tenants were served with notice of the hearing, by e-mail, on 18 October 2019 and they have had 19 days to provide a response. Copies of those e-mails were submitted at the hearing as well as the rental application showing that those e-mail addresses were provided to the landlord by the tenants. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
7. The landlord amended her claim at the hearing and stated that she was now seeking \$2570.34 in compensation for damages.

Issue 1: Compensation for Damages - \$2570.34

Relevant Submissions

8. The landlord stated that she had entered into a 6-month, fixed-term rental agreement with the tenants commencing 15 March 2019 and a copy of the executed lease was submitted with her application (█ #1). The agreed rent was set at \$800.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$400.00.
9. The landlord received notice from Newfoundland Power on 17 September 2019 that the electricity to the unit was going to be disconnected because of an outstanding issue with the tenants' electricity account. In response, the landlord issued the tenants a termination notice that same day and a copy of that notice was submitted with her application. That notice was issued under section 21 of the *Residential Tenancies Act, 2018* (notice where premises uninhabitable) and it had an effective termination date of that same day. The tenants complied with the notice and vacated on 17 September 2019.
10. The landlord stated that she had carried out a walkthrough inspection with the tenants on 15 March 2019 and a copy of that report was submitted with her application (█ #4). Another inspection was carried out on 25 June 2019, 3 months after the tenancy began, and a copy of that report was also submitted with the application (█ #5). No significant damages were noted during these 2 inspections.

11. However, after the tenants vacated, the landlord did discover that the tenants had caused damages to the property sometime after 25 June 2019. She submitted the following breakdown of the costs to carry out repairs (█ #6):

- New flooring and installation \$1025.70
- Paint/plaster \$750.00
- Cleaning \$500.00
- Blinds and installation \$144.64
- Garbage removal \$150.00

- Total..... \$2570.34

Flooring

12. The landlord stated that as a condition of the lease, the tenants were not to keep any pets at the rental unit, but she has been informed by the occupants of the upstairs apartment that the tenants had 2 dogs and a cat in the unit during their tenancy.

13. Although no damage was noted to the floors on 25 June 2019, the landlord stated that after she regained possession of the property she discovered that a large hole had been scratched in the kitchen floor, presumably by one of the dogs, and the flooring in the porch had been scratched and was lifting up away from the walls. In support of her claim, the landlord submitted photographs showing that damage (█ #7).

14. The landlord has since had that flooring replaced and she submitted receipts showing that she was charged \$444.77 for new cushion flooring (█ #9) and \$505.15 to have that flooring installed. The landlord stated that this flooring was just 4 years old.

Paint/Plaster

15. The landlord stated that the rental unit was last painted 4 years ago and the inspection reports show that there were already some scuffs and wear on these walls when the tenants moved in. The landlord pointed to the submitted photographs and indicated that there were now additional damages caused to the unit by the tenants' animals. This damage included scratches on a French door, scratches on baseboards and trim and scratches on the kitchen cupboards.

16. The landlord had the unit repainted after the tenants moved out and she submitted a copy of an INTEAC e-Transfer receipt (█ #11) showing that she had paint her painter \$750.00.

Cleaning

17. The landlord stated that the rental unit required significant cleaning after the tenants vacated and she submitted an INTERAC e-Transfer receipt (█ #12) showing that she had paid \$500.00 to have that work completed.
18. The landlord stated that the whole unit needed to be swept and mopped and the bathroom needed a thorough cleaning. She also stated that because the electricity had been disconnected from the unit, the food in the refrigerator and freezer had thawed out and those appliances needed cleaning as a result. She also stated the dishwasher was not working and there were dirty dishes left inside it. The landlord's photographs also show that there was dog feces found inside an electric baseboard heater and there was vomit and garbage found in the washing machine.

Blinds and Installation

19. The landlord also pointed her photographs showing the condition of the living room blinds after the tenants vacated. These pictures show that the slats of the blinds had been chewed up by the tenants' dogs.
20. The landlord submitted a copy of a receipt (█ #13) showing that replacement blinds cost \$104.64 and she paid \$40.00 to have them installed (█ #14). The landlord stated that these blinds were just 4 years old.

Garbage Removal

21. Exhibit █ #14 also shows that the landlord was charged \$150.00 to have garbage removed from the rental unit. Her photographs show that there were bins, garbage bags and cardboard boxes left in the backyard and another photographs shows that the tenants had left behind a moldy mattress in one of the rooms. The landlord also complained that porch closet was full of abandoned items that had to be disposed of and the outside garbage bin was also full. She claimed that it took 3 trips to the dump to have this garbage removed.

Analysis

22. 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

23. The evidence submitted by the landlord established that the floors in the porch and the kitchen were damaged by the tenants during their tenancy. Given that a good grade vinyl floor has an expected lifespan of 10 years, factoring in depreciation, I find that the landlord is entitled to compensation in the amount of \$615.42 ($\$1025.70 \times 60\%$).
24. With respect to the painting, I accept the landlord's evidence which shows that further damage had been caused to the walls and trim by the tenants during their tenancy and I also accept the landlord's claim that she had paid \$750.00 to have the unit repainted. Given that it is expected that a rental unit would need to be repainted every 3 to 5 years as a result of normal wear and tear and given that there were already some scuffs and nicks in the walls when the tenants moved in, I find that the landlord is entitled compensation equivalent to the 1 year that was remaining in the lifespan of the paintjob: \$150.00 ($\$750.00 \times 20\%$).
25. Regarding the cleaning, I accept the landlord's testimony and evidence regarding the condition of the property after the tenant's moved out. Her evidence shows

that she was charged \$500.00 to have the unit cleaned and her claim therefore succeeds in that amount.

26. I also accept the landlord's evidence which shows that living room blinds were chewed up by the tenants' dogs and that they had to be replaced. Window blinds have an expected lifespan of 10 years, and factoring in depreciation, I find that the landlord is entitled to \$86.78 (\$144.64 x 60%).
27. With respect to the garbage removal, the landlord's evidence establishes that garbage and a mattress had been left behind by the tenants and she was charged \$150.00 to have those items removed. Her claim therefore succeeds in that amount.

Decision

28. The landlord's claim for compensation for damages succeeds as follows:

- New flooring and installation \$615.42
- Paint/plaster \$150.00
- Cleaning \$500.00
- Blinds and installation \$86.78
- Garbage removal \$150.00

- Total..... \$1502.20

Issue 2: Rent - \$800.00

Relevant Submissions

29. The landlord stated that, besides the damage for which she is seeking compensation, as outlined in the previous section, she also had to replace the laminate flooring in the living room, hallway and bedroom as that flooring had also been damaged by the tenants' pets. She also complained that there was a very bad smell in the unit caused by these animals and the painting and floor replacement was needed to minimize that odour.
30. The landlord stated that these repairs, and the repairs noted in the previous section, meant that the unit was not ready for occupancy in October 2019 and she suffered a loss of rental income during that month. She is seeking an order for a payment of \$800.00 for that lost rental income.
31. The landlord stated that the unit is still vacant and she has been advertising since October 2019 on Kijiji, NL Classifieds, Facebook Marketplace and on her property management company's own website.

Analysis

- 32. I accept the landlord’s claim that the tenants had caused damages which would have made it highly unlikely that the rental unit could have been ready for rent for October 2019.
- 33. As such, the landlord’s claim for compensation for lost rental income succeeds.

Decision

- 34. The landlord’s claim for a payment of rent succeeds in the amount of \$800.00.

Issue 3: Security Deposit - \$625.00

- 35. The landlord stated that the tenants had paid a security deposit of \$400.00 on 01 March 2019 and receipt of that deposit is acknowledged in the submitted lease. As the landlord’s claim has been successful, she shall retain that deposit as outlined in this decision and order.

Issue 4: Hearing Expenses

- 36. As the landlord’s claim has been successful, the tenant shall pay her hearing expense of \$20.00 for the costs of filing this application.


Summary of Decision

- 37. The landlord is entitled to the following:

a) Compensation for Damages.....	\$1502.20
b) Rent.....	\$800.00
c) Hearing Expenses	\$20.00
d) LESS: Security Deposit	(\$400.00)
e) Total Owing to Landlords.....	<u>\$1922.20</u>

13 April 2020

Date



John R. Cook
Residential Tenancies Tribunal