

## Residential Tenancies Tribunal

Decision 19-0866-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:30 am on 23 June 2020 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1” and “landlord2”, respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred “the tenant”, also participated.

### Issues before the Tribunal

3. The landlords are seeking an order for compensation for damages in the amount of \$12,925.00.

### 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 policy 9-3: Claims for Damage to Rental Premises.

### Issue 1: Compensation for Damages - \$12,925.00

#### Relevant Submissions

##### The Landlords' Position

6. The landlords stated that they had entered into a 4-month, fixed-term rental agreement with the tenant commencing 15 March 2019 and a copy of that executed lease was submitted with the landlords' application. The agreed rent

was set at \$1200.00 per month and landlord1 stated that the tenant had paid a security deposit of \$500.00.

7. On 26 October 2019 the landlords issued the tenant a 3-month termination notice, with an effective termination date of 24 January 2020. The landlords were informed by Newfoundland Power on 30 November 2019 that the tenant had discontinued his electricity account for the rental unit and they discovered on that same day that the tenant had moved out of the property.
8. Landlord2 stated that the rental unit was approximately 24 years old and he stated that they purchased it in 2014. Landlord1 stated that although a walkthrough was conducted when the tenant moved in, there was no written condition report compiled at that time or after the tenant vacated in November 2019.
9. Landlord1 stated that on 07 September 2019 the occupant of the downstairs apartment reported to her that there was mold growth on the ceiling in her unit. Landlord1's step-father, ██████████ ("████"), who deals most of her maintenance issues, visited the basement unit to determine the source of the mold growth. On inspection, it was determined that water had entered the basement ceiling from the tenant's bathroom.
10. Landlord1 stated that █████ spoke with █████, the tenant's spouse, and she informed him that there had been an overflow from the toilet in the bathroom. █████ noticed that there was some water stains on the baseboards at that time.
11. Landlord1 stated that a month later, on 19 October 2019, █████ had requested that █████ repair a burnt-out element on her stove. Landlord1 stated that when █████ entered the property he discovered that there was a significant amount of mold and mildew growth in the unit and an inspection was arranged for 21 October 2020.
12. During that inspection, landlord1 stated that █████ noted that there was mold or mildew growing on all the windows in the unit and it was also found on the walls and in the corners. He also observed that there were damages caused to countertops in the bathroom and kitchen and there was a burn mark on the floor in the kitchen.
13. Landlord1 stated that █████ informed her that when he carried out the inspection he noted that the tenant had all the doors to all the rooms closed and that the windows were closed and that curtains and blinds were drawn. He also informed her that there was no heat turned on at the property and that the air exchanger had been shut off. Landlord1 argued that the tenant is responsible for the growth of mold as there was no air circulating through the property and as there was inadequate heat at the property.

14. The following day, landlord1 made arrangements for 2 restoration companies, Belfor and Winmar, to visit the unit and to provide assessments of the damages and to give an estimate of the costs of carrying out repairs. These reports and estimates were submitted with the landlords' application.
15. According to the quote provided by Winmar, it would cost \$30,144.67 to carry out mold remediation and to repair the other damages caused by the tenant. Belfor gave a quote of \$22,018.12.
16. Landlord1 stated that after the tenant had received these quotes, [REDACTED] thoroughly cleaned the unit and removed all of the surface mold on the walls and windows. Landlord1 stated that she was impressed with the cleaning that [REDACTED] had carried out and she contacted the restoration companies to see if their quotes could be reduced given the work that [REDACTED] had carried out. Landlord1 stated that she was informed that these quotes would not be reduced as they were unable to determine whether the mold was merely surface mold or if it had penetrated into and behind the walls.
17. The landlords stated that they decided it would be less costly to do the work themselves and they hired [REDACTED] to carry out the repairs. They submitted a quote with their application, from [REDACTED], dated 03 November 2019, showing that he would charge \$12,950.00 to carry out the repairs. That quote is broken out, by room, as follows:

- Main bathroom ..... \$2900.00
- Repair basement apartment ..... \$675.00
- Front bedroom ..... \$2750.00
- Middle room ..... \$475.00
- Kitchen ..... \$3825.00
- Living room ..... \$650.00
- Master bedroom ..... \$875.00
- Replace blinds ..... \$450.00
- Remove debris ..... \$325.00

Total..... \$12,925.00

18. No other receipts were submitted at the hearing. Landlord1 stated that [REDACTED] has completed the work, as quoted, and she has been issued an invoice which matches the quote. That invoice was not submitted at the hearing.
19. Regarding the main bathroom, landlord1 stated that [REDACTED] had informed her that [REDACTED] had told him that there had been an overflow in the bathroom and it was this overflow which had caused the water to enter the downstairs apartment. She pointed out that [REDACTED] later denied that there had been an overflow.

20. Landlord1 stated that there was notable water damage caused to the walls and baseboard in the bathroom because of this overflow and mildew was detected in these water-damaged areas. She also complained that the water had damaged the vinyl cushion flooring and that the subfloor had sustained water damage as well.
21. Because of this damage, ■■■ was required to remove the baseboards in the bathroom and he also had to cut out and replace the water-damaged drywall. The vinyl floor also had to be replaced and some of the subfloor had to be replaced.
22. Landlord1 also complained that the end cap on the countertop had been broken off and had to be replaced.
23. Landlord1 stated that the rental unit was last painted approximately 4.5 years ago and she claimed that the vinyl flooring was also installed at that time. Regarding the bathroom countertop, the landlords did not know how old that countertop was and claimed that it was already there when they purchased the property in 2014.
24. Regarding the 3 bedrooms, landlord1 stated that although ■■■ had cleaned the mold off of the walls and the windows, there still remained some staining where the mold initially had been. As a result, ■■■ had to repaint the walls, ceiling and window trim in the master bedroom and the front bedroom, and some drywall had to be replaced in that front bedroom as well. And according to the submitted quote, the window trims in the middle room and the living room also had to be repainted.
25. Regarding the kitchen, landlord1 stated that because of the staining from where the mold had been, the walls, trim and ceiling in this room also had to be repainted. She also stated that there was a significant amount of mold buildup in the cupboard under the sink and that cabinet had to be removed and drywall had to be replaced.
26. Landlord1 also complained that the countertop in the kitchen had also suffered water damage and it had become swollen and the laminate was bubbling. Additionally, because the countertop had swollen, the cabinet doors were unable to open and close properly resulting in a crack in the countertop from the doors striking it. Because of this damage, that countertop also had to be replaced.
27. Landlord1 also stated that there was a burn mark on the cushion floor in the kitchen, which she stated she suspected was caused by a hot pot being laid on the floor. That floor has not yet been replaced.

28. She also claimed that 9 sets of plastic mini-blinds at the unit had to be disposed of because they were either damaged by the tenants or because mold had gotten into the pull strings or the hardware. These blinds have not been replaced and landlord1 stated that her current tenants are using their own window coverings. Landlord1 stated that these blinds were approximately 2 to 3 years of age.
29. Landlord1 also stated that ■ had charged her \$350.00 to bring items to the landfill, but she stated that she was unsure of how many trips ■ had to make.

### The Tenant's Position

30. The tenant stated that although he was not in the country at the time the water entered the downstairs apartment, he stated that ■ had told him that there was no overflow in the bathroom, but rather that the toilet was leaking.
31. Regarding the development of mold in the apartment, the tenant argued that the landlords had not established that he was responsible for that issue. He denied their claim that he had had the rooms closed off or that he was not turning on the heat in the apartment and he claimed that the blinds were not always closed.
32. Regarding the air exchanger, the tenant testified that he was from out of the country and had just moved to Canada and he did not know what an air exchanger was and he was unfamiliar with their operation. He also pointed out that the landlords gave him no instructions or directions on the operation of the air exchanger when he moved into the property.
33. With respect to the quotes from Belfor, Winmar and ■ the tenant claimed that these quotes were excessive. He stated that after he was informed about the mold by the landlords ■ cleaned all the affected areas in the house and he pointed to his photographs showing the condition of the unit after it had been cleaned. The tenant argued that as ■ had done such a thorough job cleaning the property, there was no need to repaint any of the rooms at the unit.
34. He also argued that the landlords had not presented any photographs showing the condition of the unit after they regained possession of the property and he pointed out that they had produced no evidence to establish that there was any damage caused by the mold or that it had gone into the walls. He stated that it was merely surface mold which was easily cleanable.
35. In support of that claim, he pointed to the landlords' report from Belfor in which an inspector states:

*I can not determine from visual inspection if this is just surface mold or if it goes deeper into the building materials but most looks like it may be cleanable. I will not confirm the cause but high humidity and lack of air circulation can cause mold.*

36. Regarding the other damages, the tenant argued that much of it should be chalked up to normal wear and tear. For example, regarding the floor in the kitchen, he argued that this damage is minor and that there is no need to replace the whole floor and that the landlords could just repair the small affected area. He also pointed out that the landlords had not submitted any photographs showing any damage to the floor
37. He also states that although he may be responsible for damaging 2 or 3 blinds, he denied that he had caused damage to all 9 blinds in the rental unit.

## **Analysis**

38. 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*

39. The landlord's evidence clearly shows that, in October 2019, there was a significant build-up of mold on the windows in the unit, under the kitchen sink and on some of the walls and ceilings. I accept the landlords' claim that they had never had a mold issue at the rental unit before the tenant moved into the property, and it seems probable that the mold was not caused by any defect in the house, but rather by the tenant's failure to allow air to circulate in the unit. In particular, the tenant did not contest the landlords' contention that the air exchanger had been turned off and I find it probable that that had likely been a major contributing cause of the mold growth.
40. I am not convinced, however, that the landlords are entitled to all of the costs that they are seeking here.
41. First of all, although the landlords' photographic evidence shows that there was mold on the windows, walls and under the sink in October 2019, they have not submitted any evidence showing the condition of the unit after the tenant vacated at the end of November 2019. The tenant's photographs, however, show that the mold issue had been addressed by him after he had received the landlords' request for repairs. In his submissions, no mold is seen on any of the windows and it has been cleaned from the walls and the cupboards. The landlords even acknowledged at the hearing that [REDACTED] had done an impressive job in cleaning the unit.
42. Secondly, the landlords contended that there were still stains on the walls, ceilings and trim work after the cleaning had been carried out, but no photographic evidence was submitted at the hearing to substantiate that claim or to stand in contrast to the photographs submitted by the tenant.
43. The landlord's also submitted no evidence to establish that the mold, shown in the photographs taken in October 2019, was anything more than surface mold. And their own submission, the report from Belfor, indicates that most of the visible mold appears to be cleanable.
44. To deal with the issue of mold in the bedrooms and living room, the landlords stated that they had [REDACTED] repaint some walls and ceilings as well as window trims. I'll make 2 comments on the costs for repainting. Firstly, I am of the view that some of the quotes provided by [REDACTED] were excessive. While I agree that a quote of \$875.00 to paint the walls, ceiling and window trim in the master bedroom does fall within an acceptable range of reasonable costs, I found the quote of \$650.00 to paint the window trim alone in the living room and \$475.00 to only paint the window trim in the middle (blue) room to be excessive and out of proportion for the costs quoted for the master bedroom. Secondly, according to [REDACTED]'s quote, painting was also required in the kitchen and bathroom, but that quote does not breakdown how much [REDACTED] is charging for painting in those rooms and

what he is charging for the other repairs (replacement of flooring, replacement of countertops, etc.).

45. In any case, and putting aside my concerns about the lack of evidence to justify a claim for painting and my concerns about ■■■'s quote, the landlords stated that the rental unit was last painted 4.5 years ago. As indicated in paragraph 38, above, depreciation must be taken into account when ordering an award for damages. As the quality of a paintjob in a rental unit deteriorates over time as a result of normal wear and tear through successive tenancies, policy with this Section is that a landlord would have to repaint a rental unit every 3 to 5 years anyhow. Given that the paintjob at the unit was at the end of its lifespan and that depreciation has to be factored in, I find that the landlord is not entitled to these costs as they would soon have had to repaint the unit anyhow.
46. Regarding the other, non-mold related damages, I find that the tenant is liable for some of these.
47. The landlords claimed that the tenant had damaged 9 sets of blinds and they had to be disposed of. The landlords' photographs, and some of the photographs submitted by Winmar and Belfor, do show that some of the slats in several sets of the plastic mini-blinds at the unit were damaged. However, there was no evidence submitted by the landlords to corroborate their claim that any of the blinds were soiled with mold. I also note that in the Winmar and Belfor reports, I can only find reference to the replacement of 5 sets of blinds. According to ■■■'s quote, each blind can be replaced for \$50.00 each. Given that these blinds were 2 years old and have an expected lifespan of 5 years, I find that the landlord is entitled to an award of \$150.00 (\$50.00 each x 5 x 3/5 years remaining in lifespan).
48. I also accept the landlord claim that the tenant was responsible for causing damage to the countertops in the bathroom and kitchen. But no receipts were submitted showing the costs of replacing these countertops and the landlords did not present ■■■'s invoice for the work he had carried out at the unit. ■■■'s quote from 03 November 2019 also does not state exactly how much he would charge for these countertops. The landlords also testified that they did not know the age of these countertops and stated they were there when they purchased the property in 2014. Keeping in mind that countertops only have a lifespan on 15 years and that we don't know the age of these damaged countertops, I find that the landlords are entitled to a nominal award \$100.00 for each one.
49. The tenant also did not contest the landlords' contention that there was a burn mark on the floor. No photographs were presented showing that damage, but I nevertheless agree with them that as this was a vinyl cushion floor, it probably could not be repaired but rather needed to be replaced. As with the other damaged items, though, I cannot determine, based on the evidence submitted at the hearing, what ■■■ had quoted the landlords for the replacement of that floor. A medium grade cushion floor has an expected lifespan of 8 years and the



landlords stated that this floor was installed 2 years ago. I find that \$300.00 is a fair award.

50. I also find it probable that the tenant was responsible for an overflow in the bathroom which caused water to enter into the basement apartment, causing the mold growth on the ceiling in that unit. I find that a lump sum of \$1000.00 is a reasonable award for the costs of repairing the ceiling in the downstairs unit and to carry out the needed repairs to the floors and walls in the tenant's bathroom.
51. According to the 03 November 2019 quote from [REDACTED], he writes that he would also charge the landlords \$350.00 for trips to the landfill. But the landlords testified that they did not know how many trips he had to make. Based on the amount of work that was required, and on the assumption that he used a truck, I find it probable that he may have had to make 2 trips to dispose of flooring, countertops and debris from the bathroom repair. I find that the landlords are entitled to \$50.00 for each.

**Decision**

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

- Blinds..... \$150.00
  - Countertops..... \$200.00
  - Kitchen floor ..... \$300.00
  - Overflow repairs ..... \$1000.00
  - Trip to landfill ..... \$100.00
  - Painting ..... \$0.00
- Total ..... \$1750.00

**Issue 2: Security Deposit - \$500.00**

53. The tenant paid a security deposit of \$500.00 on 11 April 2019. As the landlords' claim for damages has succeeded, they shall retain deposit as outlined in this decision and attached order.

**Issue 3: Hearing Expenses**

54. As the landlord's claim has been successful, the tenant shall pay the landlord's hearing expenses of \$20.00 for the costs of filing this application.

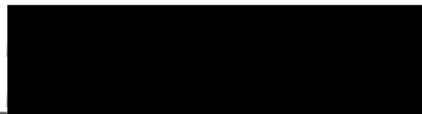
**Summary of Decision**

55. The landlords are entitled to the following:

- Compensation for Damages ..... \$1750.00
- Hearing Expenses ..... \$20.00
  
- **LESS: Security Deposit** ..... **(\$500.00)**
  
- Total Owing to Tenants ..... \$1270.00

27 August 2020

\_\_\_\_\_  
Date



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