

## Residential Tenancies Tribunal

Decision 19-0867-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 11:25 a.m. on February 5, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not attend the hearing.

### Preliminary Matters

4. [REDACTED] and [REDACTED] appeared as witnesses for the landlord.
5. The address of the rental unit should read [REDACTED].
6. The tenant was not present or represented at the hearing. Prior to the hearing, I called the tenant but I was unable to reach him. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) a respondent to an application must be served with the application for dispute resolution 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/she has been properly served.

7. The affidavit of service submitted by the landlord show that the notice of the hearing scheduled for January 6, 2020 was electronically sent on November 8, 2019. The landlord submitted a copy of the text message. The notice of re-scheduled hearing was sent by e-mail by Residential Tenancies on January 7, 2020. The tenant has had 28 days to provide a response. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

### **Issues before the Tribunal**

8. The landlord is seeking the following:
  - a. Compensation for damages in the amount of \$3208.51.

### **Legislation and Policy**

9. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
10. Also relevant and considered in this case are Sections 10 and 14 of the Act.

### **Issue 1: Payment of damages - \$3208.51**

#### Landlord Position

11. The landlord testified that the tenant moved into the unit on June 1, 2019 on a month to month tenancy with rent set at \$1050.00 per month due on the 1<sup>st</sup> of each month. On August 30, 2019 the landlord sent a termination notice by a text message to the tenant to vacate on November 30, 2019. The tenant vacated on October 31, 2019. When the landlord went into the unit after the tenant vacated, there was a smell of cat and dog urine, the place needed to be cleaned and the flooring had to be replaced. He hired [REDACTED] to clean the unit. She charged \$400.00 for the cleaning.
12. The landlord testified that he had to replace all of the carpet in the unit because it was saturated with cat and dog urine. When you walked on the carpet the urine would wheeze. The carpet in the 2 bedrooms was 2 years old and the carpet in the living room and the hallway was 6 years old. He replaced the carpet with laminate flooring at a cost of \$838.56. 50% of the flooring was used for the 2 bedrooms and the other 50% was used for the living room and hallway. He said it was cheaper to replace the flooring with laminate flooring than carpet. He spent about 50 hours @ a rate of \$19.40 (\$970.00) to remove the carpet and install the laminate flooring. When he removed the carpet he had to use bleach to clean the sub-floor.

13. The landlord testified that the dimmer switch in the living room was broken. He purchased a new switch at Smith's Home Hardware at a cost of \$21.84.
14. The landlord testified that he had to paint the entire unit. The ceilings, walls, baseboards and doors needed to be painted because the cleaners couldn't get all of the dirt off. He purchased the paint and supplies at Smith's Home Hardware at a cost of \$243.60 and he spent about 25 hours painting. The unit was painted in August 2018.
15. The landlord testified that he paid his friend, [REDACTED], \$300.00. His friend helped him with the flooring and the painting. [REDACTED] also made a trip to the dump as he brought the old carpet to the dump.
16. The landlord submitted into evidence a receipt from [REDACTED] for the cleaning (LL #1), a USB (LL #4) containing photographs of the unit prior to the start of the tenancy and photographs of the unit after the tenant vacated. He also submitted 3 receipts from Kent for the purchase of the flooring (LL #2), a receipt from Smith's Home Hardware for the purchase of the paint (LL #3) and a receipt from Smith's Home Hardware for the purchase of the light switch. He said he purchased the paint and flooring prior to the tenant moving out because it was on sale. A week or two before the tenant moved out he had to go into the unit and he noticed the condition of the unit.

#### Witness Position

17. [REDACTED], cleaner and witness for the landlord, testified that the unit was filthy dirty when she went in to clean. The smell of cat and dog urine hit you as soon as you entered the unit. You could see wet spots on the carpets. The lady that helped her to clean had to wear a mask. The cleaning consisted of the ceilings, floors, walls, baseboards, fridge, stove, oven and the bathroom. The walls were mostly dirty from the floor up to about 2'. They couldn't get all of the marks off the walls. Both of them spent all day November 1, 2019 cleaning. She charged the landlord \$400.00 to clean the unit. [REDACTED] testified that she cleaned the unit prior to the start of the tenancy. The unit was spotless.
18. [REDACTED] testified that the carpets were soaking wet. From previous experience, with the smell of urine so strong the flooring underneath the carpet would be also be wet.
19. [REDACTED], witness for the landlord, testified that he helped the landlord with the flooring and painting. He also made a trip to the dump. The landlord gave him \$300.00. [REDACTED] also testified that there was strong smell of urine in the unit.

## Analysis

20. I have reviewed the testimony and the evidence presented of the landlord and the witnesses. I have determined that there is one issue that needs to be addressed; (i) are there damages to the unit and is the tenant responsible for the damages. The burden of proof lies with the landlord to establish, that the damage exists, and that the tenant is responsible for the cost of repairs. Based on the testimony of the landlord and the witnesses and the photographs presented, I find that the unit needed to be cleaned because the unit was dirty; it needed to be painted because the cleaners couldn't get all the marks off the walls; and the carpets had to be replaced because they were wet with urine and they smelled.
21. The amount the landlord is claiming for the cleaning is reasonable. Flooring is a depreciable item with a life expectancy of 10 years. As half of the flooring was 6 years old and the other half was 2 years old, the average would be 4 years. The claim for replacement of the carpet succeeds in the amount of \$1083.96 ( $\$836.56$  for materials +  $\$970.00$  labour =  $\$1806.56 \div 10$  years =  $\$180.66 \times 6$  years remaining =  $\$1083.96$ ).
22. Painting is a depreciable item with a life expectancy of 3 – 5 years. As the unit was painted in 2018, the claim for painting succeeds in the amount of \$582.88 ( $\$243.60$  for materials +  $\$485.00$  {25 hours x  $\$19.40 = \$485.00$ } for labour =  $\$728.60 \div 5$  years =  $\$145.72 \times 4$  years remaining =  $\$582.88$ ).
23. With regard to the replacement of the dimmer switch, I accept the landlord's testimony that the dimmer switch was broken during the tenancy. The landlord presented a receipt in the amount of \$21.84. The claim for replacement of the dimmer switch succeeds in the amount of \$21.84.

## Decision

24. The landlords' claim for compensation for damages succeeds as per the following:
- |   |                         |
|---|-------------------------|
| a) Cleaning.....                            | \$400.00                |
| b) Replacement of the flooring .....        | \$1083.96               |
| c) Painting .....                           | \$582.88                |
| d) Replacement of the dimmer switch .....   | \$21.84                 |
| e) <b>Total owing to the Landlord .....</b> | <b><u>\$2088.68</u></b> |

## Issue 2: Application for Security Deposit

25. Under the authority of Section 41.(j) the director may authorize a landlord to offset money a tenant owes to the landlord against money the landlord owes

to the tenant. Further under subsection (m), the director has the authority to determine the disposition of the security deposit.

Landlord Position

26. The landlord testified that a \$500.00 security deposit was paid prior to June 1, 2019.

**Analysis**

27. A \$500.00 security deposit was paid prior to June 2019. The landlord shall retain the security deposit as he has been successful in the claim for compensation for damages. The interest rate on security deposits for 2019 is 0%.

**Decision**

28. The landlord shall retain the security deposit as outlined in this decision and attached order.


**Summary of Decision**

29. The landlord is entitled to the following:

- a) Compensation for damages ..... \$2088.68
- b) **Less the security deposit** ..... **(500.00)**
- c) **Total owing to the landlord** ..... **\$1588.68**

May 19, 2020

Date

  
Residential Tenancies Section