

## Residential Tenancies Tribunal

Decision 19-0869-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:25 am on 05 February 2020 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 tenant, [REDACTED], hereinafter referred to as “the tenant”, also participated.

### Issues before the Tribunal

3. The landlord is seeking the following:
  - An order for compensation for damages in the amount of \$2000.00;
  - An order for a payment of rent in the amount of \$1150.00;
  - An order for a payment of late fees in the amount of \$75.00; and
  - Authorization to retain the security deposit of \$862.50.

### 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.

### Preliminary Matters

6. The landlord amended her claim for compensation for damages and stated that she is now seeking \$1500.00.

## Issue 1: Compensation for Damages - \$1500.00

### Relevant Submissions

#### The Landlord's Position

7. The landlord and tenant entered into a 1-year, fixed-term rental agreement on 01 March 2019 and a copy of the executed lease was submitted with the landlord's application (█ #1). The agreed rent was set at \$1150.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$862.50.
8. The landlord stated that on 02 November 2019 the tenant informed her that she was terminating their rental agreement and she vacated on 04 November 2019.
9. The landlord stated that after the tenant moved out she discovered several deficiencies at the rental unit and she submitted the following breakdown of the costs to carry our repairs (█ #2):

• Cleaning .....	\$300.00
• Replace wet bar .....	\$750.00
• Remove garbage .....	\$250.00
• Repaint ceiling .....	\$150.00
Total.....	<u>\$1450.00</u>

#### Cleaning

10. The landlord stated that after the tenant moved out she was required to clean the whole house. She claimed that the sink and tub in the bathroom needed cleaning and there were items left in the drawers in the bathroom. She also stated that all of the baseboards and the floors in the unit needed cleaning.
11. In support of her claim, the landlord submitted a USB drive containing an inspection report and photographs which were taken before the tenancy began, as well as photographs which were taken after the tenant moved out.
12. Although the tenants vacated 3 months prior to the hearing date, the landlord stated that the unit has not yet been cleaned. She testified that it was cleaned, however, before the tenant moved in and she was charged \$300.00. No receipt or invoice was submitted at the hearing.

#### Replace Wet Bar

13. The landlord stated that there was a wet bar in the basement of the rental unit and she claimed that when she had carried out an inspection of the property in October 2019 she noted that it had been dismantled and was being stored in the shed.

14. The landlord stated that one of her workers salvaged the pieces of the wet bar and reconstructed it. It took him 14 hours to do that work and the landlord is seeking \$770.00 in compensation.
15. The landlord stated that the wet bar was approximately 50 years old.

#### Garbage Removal

16. The landlord pointed to the photographs on the USB drive showing that there were numerous items and garbage bags left in the shed. She had these items removed and taken to the dump and she claimed that it took 3 hours to have that work completed. The landlord is seeking \$250.00 in compensation for her labour.

#### Repaint Ceiling

17. The landlord stated that the tenant had stuck glow-in-the-dark stars to a bedroom ceiling during her tenancy and when the landlord removed those stars some of the ceiling paint tore away. That landlord stated that this ceiling had to be repainted. She submitted a copy of an invoice at the hearing (████ #4) showing that she was charged \$954.50 to have the ceiling repainted as well as to have other areas of the unit plastered and painted. She figured that the ceiling repairs comprised about \$150.00 of that total amount.

### The Tenant's Position

#### Cleaning

18. The tenant claimed that the unit required cleaning when she moved into it in March 2019 and she testified that she was required to hire a professional to do that work.
19. She also submitted her own photographs at the hearing showing the condition of the unit when she moved in and pointed out the area behind the washer and the dryer was dirty. She also claimed that when she turned the Jacuzzi on for the first time, brown liquid came out the jets. She also complained that the dishwasher broke during her tenancy and brown liquid would leak from that too.
20. Regarding the costs the landlord is seeking here, the tenant accepts responsibility for not having the unit adequately cleaned and she conceded that she owes the landlord \$300.00 in cleaning costs.

#### Replace Wet Bar

21. The tenant stated that her son was leaning on the bar one day, watching TV, and it just fell over. She claimed that it was only attached to the wall with one screw.

22. The tenant argued that the bar was a safety hazard and fearing that he son would be harmed, she took the bar apart and put it in the shed. She had intended to put it back together, but she did not have time.
23. The tenant also complained that the costs the landlord is seeking here are excessive.

#### Garbage Removal

24. The tenant acknowledged that the items shown in the landlord's photographs belonged to her. She stated that she would have removed those items if she had been given enough time. She also stated that her mother had been in contact with the landlord seeking to retrieve these items.

#### Repaint Ceiling

25. The tenant acknowledged that she had placed these stickers on the ceiling and she conceded that she is responsible for the costs to carry out the repairs.

### **Analysis**

26. 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*

27. Regarding the cleaning, as the tenant concedes that she is responsible for the costs sought here by the landlord, her claim succeeds in the amount of \$300.00, as claimed.
28. Regarding the wet bar, I accept the landlord's claim that it had been dismantled and put in the shed. No receipts were submitted for the costs of materials and the landlord claimed that the costs she is seeking here are merely for the labour to reassemble the bar. However, I find that the amount of time that the landlord is claiming here, 14 hours, and the hourly rate that she charges, \$55.00, to be excessive. I find that \$150.00 is fair compensation for the labour costs to reassemble the bar.
29. With respect to the garbage removal, I accept the landlord's claim that it took 3 hours to have those items removed. Policy with this Section is that a landlord may claim \$19.40 for each hour of their personal labour. As such, the landlord's claim succeeds in the amount of \$58.20.
30. The landlord's claim for the costs of repainting the ceiling succeeds in the amount of \$150.00 as the tenant accepted responsibility for that damage and did not contest the costs sought by the landlord.

### **Decision**

31. The landlord's claim for compensation for damages succeeds in the amount of \$658.20, determined as follows:

• Cleaning .....	\$300.00
• Replace wet bar .....	\$150.00
• Remove garbage .....	\$58.20
• Repaint ceiling .....	\$150.00
Total.....	<u>\$658.20</u>

## **Issue 2: Rent - \$1150.00**

### **Relevant Submissions**

#### The Landlord's Position

32. The landlord stated that she was only informed on 02 November 2019 that the tenant was moving out. The tenant vacated on 04 November 2019.
33. The landlord pointed out that this tenancy was to run for a fixed-term of 1 year and was not supposed to expire until 29 February 2020. She acknowledged that there were some maintenance issues at the unit and she was willing to allow the tenant to break that lease and had informed her that she could move on just 2-month's notice.
34. The landlord complained, though, that the tenant had only given her 2 days notice that she was moving. She stated that the unit has been vacant since the tenant moved out and the landlord has suffered a loss of rental income for the past 3 months.
35. She testified that the unit has been advertised to rent on her property management company's website, on Kijiji, on Zumper and on other social media platforms.
36. The landlord is seeking just 1-month's rent in lieu of a proper termination notice: \$1150.00.

#### The Tenant's Position

37. The tenant stated that the reason she left on such short notice was because there was a problem with mold at the unit. She testified that she showed her doctor photographs of the mold and she instructed her to vacate the unit immediately.
38. The tenant also complained that she was promised that the windows were to be replaced during her tenancy as they would not open. She stated that during the whole summer she was unable to open any windows at the property. Some of the windows were replaced at the end of the summer, but only after the tenant had withheld her rent.
39. She also complained that the landlord was slow to deal with other maintenance issues at the property.

### **Analysis**

40. I agree with the landlord in this matter. As this tenancy was not set to expire until 29 February 2020, the tenant could not terminate her agreement prior to that date. Given that the tenant had only given the landlord 2-day's notice that she

was vacating, I find it highly improbable that she would have been able to get new tenants into the unit for November 2019 to cover off that rent.

41. The tenant did present some evidence and testimony at the hearing showing that there was a mold issue at the unit and that there were maintenance issues that the landlord had not been addressing. However, if the tenant wished to terminate her lease because of these issues, she was still required to issue the landlord a termination notice.
42. As the landlord is only seeking rent for the month of November 2019, I find that her claim succeeds in the amount of \$1150.00.

### **Decision**

43. The landlord's claim for a payment of rent succeeds in the amount of \$1150.00.

### **Issue 3: Late Fees**

#### **Relevant Submissions**

44. The landlord has assessed late fees in the amount of \$75.00.

#### **Analysis**

45. Section 15.(1) of the *Residential Tenancies Act, 2018* states:

#### ***Fee for failure to pay rent***

**15. (1)** *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

46. The minister has set the following fees:

*Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:*

*(a) \$5.00 for the first day the rent is in arrears, and*

*(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.*

47. As the tenant has been in arrears since 02 November 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

**Decision**

48. The landlord’s claim for late fees succeeds in the amount of \$75.00.

**Issue 4: Security Deposit**

49. The tenant paid a security deposit of \$862.50 on 21 February 2019 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord’s claim has been successful, she shall retain the security deposit as outlined in this decision and attached order.

**Issue 5: Hearing Expenses**

50. 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**

51. The landlord is entitled to the following:

a) Compensation for Damages.....	\$658.20
b) Rent.....	\$1150.00
c) Late Fees .....	\$75.00
d) Hearing Expenses .....	\$20.00
e) LESS: Security Deposit .....	(\$862.50)
Total Owing to Landlord .....	<u>\$1040.70</u>

07 May 2020

Date



John R. Cook  
Residential Tenancies Tribunal