

Residential Tenancies Tribunal

Decision 19-0870-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:23 pm on 28 January 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the landlord”, also participated. Her co-respondent, [REDACTED], was not in attendance

Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$337.50.
4. The landlord is seeking an order for compensation for damages in the amount of \$337.50 and authorization to retain the security deposit.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is section 14 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Compensation for Damages - \$337.50

Relevant Submissions

The Landlord's Position

7. The landlord and the tenant entered into a monthly rental agreement, commencing 01 October 2019, and a copy of the executed rental agreement was submitted with the tenant's application (█ #1). The agreed monthly rent was set at \$450.00 and it is acknowledged in the agreement that the tenant had paid a security deposit of \$337.50.
8. On 26 October 2019 the landlord issued the tenant a termination notice and a copy of that notice was submitted at the hearing (█ #2). That notice had an effective termination date of 01 November 2019 and the tenant testified that he vacated on 30 October 2019.
9. The landlord stated that during this tenancy, the tenant had broken a bed that had been provided to him as well as a chair. She is seeking compensation in the amount of \$200.00 for the replacement costs of each of these items.

Single Bed

10. The landlord stated that the tenant was provided with a single mates bed when he moved into the rental unit. She stated that this bed was 3 years old and was "like new" when the tenancy began.
11. The landlord complained that when the tenancy had ended, the front of the bed had been completely broken off and the bed had to be replaced. No photographs or videos were submitted by the landlord showing this damage. The landlord stated that she had replaced that bed at a costs of \$200.00. No receipt was submitted at the hearing.

Chair

12. The landlord also stated that the tenant was provided with a chair when he moved in. This chair belonged to the landlord's kitchen set. She stated that the chair was about 10 years old when the tenant moved in and it was in good condition.
13. One evening, the landlord stated that she heard a bang and the tenant came out from his room and informed her that the chair was broken. She then attempted to fix the chair with glue, but she claimed that it was again broken when the tenant moved out. No photographs were submitted by the landlord. The landlord stated that she had replaced the kitchen set at a cost of \$200.00. No receipt was submitted at the hearing.

The Tenant's Position

Single Bed

14. The tenant stated that the rail which supports the mattress was already damaged when he moved into the unit and it was repaired by the landlord after he pointed out that damage.
15. Regarding the damage that the landlord is complaining about on the front of the bed, the tenant stated that he did not cause that damage and he claimed that it happened one day while he was at school. He testified that he returned to the house on 28 October 2019 and he found that the door to his room had been screwed shut. He contacted the landlord to allow him entry to his room and when he entered he found that the bed was damaged.
16. The tenant claimed that the bed was not in that condition when he left for school that day and he surmised that the landlord had entered his room sometime during that day and caused that damage. He played a recording at the hearing, which was made on 27 October 2019, in which the landlord, ■■■, could be heard yelling at him and threatening to oust him from the unit on 01 November 2019.
17. The tenant also played a video at the hearing showing this damaged bed.

Chair

18. The tenant stated that the spindles which hold the legs of the chair together were already loose when the tenancy began. He stated that one day while he was sitting on the chair, the legs broke because of the loose spindles.
19. The tenant stated that when he complained to the landlord about the chair, they provided him with some screws and instructed him to repair the chair. He submitted photographs at the hearing showing the condition of the chair when he moved into the unit and photographs showing the chair after he had repaired it with screws and metal braces.

Analysis

20. 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 wilful 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

21. There was no report of an incoming or outgoing inspection, and in that regard I find that the landlord has failed to establish that these pieces of furniture were in good condition when the tenancy began. It was the tenant's contention that they were both in poor condition when he moved in and that they had already suffered damage. I accept that testimony.
22. The landlord has also failed to establish the costs she is seeking here. No receipts or estimates were submitted at the hearing to establish that these items have been replaced or to show that they each cost \$200.00.
23. I also find that the landlord had failed to establish that these items were damaged through some deliberate or negligent act on the part of the tenant.
24. Regarding the chair, I find that that it fell apart because of its poor condition when the tenant had merely been using it in a normal way.

25. I also found the tenant's testimony concerning the bed to be credible and believable and I accept his claim that when he returned from school on 28 October 2019 he found that the door to his room had been screwed closed and that when he entered his possessions had been disturbed and his bed damaged.
26. As the landlord failed to establish the costs she is seeking, as she failed to establish the condition of this furniture when the tenant moved in and as she failed to establish that the tenant had caused this damage through any deliberate or negligent act, her claim does not succeed.

Decision

27. The landlord's claim for compensation for damages does not succeed.

Issue 2: Security Deposit

28. The tenant stated that he had paid a security deposit of \$337.50 on 30 August 2019 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim for compensation for damages has not succeeded, she shall return the full amount of the security deposit to the tenant.
29. The tenant's claim for refund of the security deposit succeeds in the amount of \$337.50.

05 May 2020

Date



John R. Cook
Residential Tenancies Tribunal