

Residential Tenancies Tribunal

Decision 19-0878-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:15 am on 07 January 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”.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing. Her co-respondents, [REDACTED] and [REDACTED], did not participate.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for a payment of \$1064.14 in compensation for damages, and
 - Authorization to retain the security deposit of \$937.50.

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

Preliminary Matters

7. [REDACTED] and [REDACTED] were not present 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. With her application the landlord submitted an affidavit stating that the tenants were served with notice of the hearing, by e-mail, on 14 November 2019 and they have had 53 days to provide a response. The landlord also submitted a copy of that e-mail and pointed out that the e-mail addresses she had used were provided to her in the submitted lease. 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.

8. The landlord amended her application at the hearing and stated that she was now only seeking \$1009.07 in compensation for damages.

Issue 1: Compensation for Damages - \$1009.07

Relevant Submissions

The Landlord's Position

9. The landlord stated that she had entered into a 1-year, fixed-term lease with the tenant on 01 May 2018. The agreed rent was set at \$1250.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$937.50. The tenancy ended on 31 August 2019.
10. The landlord stated that after the tenants had moved out she was required to replace 4 sets of blinds, she had to carry out some cleaning of the unit and garage had to be removed.

Blinds

11. The landlord stated that there were 4 sets of plastic mini-blinds at the unit which were damaged by the tenant's dog. She submitted a USB drive at the hearing containing photographs showing these blinds and she pointed out that several of the plastic slats were cracked or bent.
12. The landlord stated that she replaced these 4 sets of blinds and she is seeking \$261.57 in compensation. No receipt or invoice was submitted at the hearing, but the landlord pointed to a work order which indicates that the landlord is charging \$275.34 + tax to replace 5 blinds at the unit.
13. The landlord stated that these blinds were approximately 5 years old.

Cleaning

14. The landlord also stated that the rental unit had to be fully cleaned after the tenants moved out and she again pointed to the photographs on the submitted USB drive. The landlord complained that there was dust on all the baseboards and the walls and she stated that there was pet hair everywhere.
15. In support of her claim, the landlord pointed to the photographs of the rental unit that were taken after the tenants moved out. These photographs show dust and hair on all the baseboards, trim and window sills throughout the unit and they also show that there was some dirt on the floors and that the carpets were soiled. They also show that the bathroom had not been cleaned and there were hairs and dirt on the toilet and in the sink and tub. They also show that the refrigerator was not adequately cleaned and that there were crumbs and dirt in the cupboards.
16. The landlord pointed to an invoice on the USB drive showing that she was charged \$546.25 to have the unit professionally cleaned.

Garbage Removal

17. The landlord also complained that the tenants had left behind some garbage and furniture at the unit which needed to be collected and then taken to the dump. These items can be seen in the landlord's photographs. She is seeking \$150.00 in compensation for that work.

The Tenant's Position

Blinds

18. The tenant acknowledged that some of the blinds may have been damaged during her tenancy. She claimed that the blinds in the living room were already damaged when she moved in and she stated that she was unsure of the condition of the blinds in the second bedroom when she moved out.

Cleaning

19. The tenant stated that she had cleaned as best she could before she vacated.

Garbage Removal

20. Regarding the garbage, the tenant acknowledge that items were left behind at the unit after she vacated and she did not contest the costs the landlord is seeking here.

Analysis

21. 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;*

22. With respect to the plastic mini-blinds, the landlord's photographs do show that some of these blinds were damaged and the tenant conceded that some of this damage occurred during her tenancy. However, the landlord presented no evidence at the hearing (e.g., an invoice or receipt) to establish that it cost \$261.57 to replace those blinds. Hence, that claim fails.

23. Regarding the cleaning and the garbage removal, I find that the rental unit had not been adequately cleaned before the tenancy ended, and the landlord's evidence shows that she was charged \$546.25. And as the tenant did not contest the landlord's claim for the costs of removing garbage, that claim succeeds too.

Decision

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

- Cleaning \$546.25
- Garbage Removal \$150.00

- Total \$696.25

Issue 2: Hearing Expenses

25. The landlord submitted a hearing expense claim form and a receipt for \$20.00 for the costs of filing this application.

26. Policy with this Section is that a party may claim the filing fee as a hearing expense where they have received an award that is in an amount that is greater than the security deposit. As the landlord was awarded \$696.25 and as the security deposit is \$937.50, the landlord's claim for the filing fee does not succeed.

Issue 3: Security Deposit


27. The tenants paid a security deposit of \$937.50 on 27 March 2018 and that deposit is acknowledged in the submitted lease. As the landlord's claim for damages has been successful, she shall retain that portion of the deposit and return the remainder to the tenants, determined as follows:

- Security Deposit \$937.50
- LESS: Compensation for Damages (\$696.25)

- Total Owing to Tenants \$241.25

23 April 2020

Date


John R. Cook
Residential Tenancies Tribunal