

Residential Tenancies Tribunal

Decision 19-0903-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:30 am on 15 January 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of \$1569.75 in compensation for damages,
 - An order for a payment of rent in the amount of \$2800.00, and
 - Authorization to retain the security deposit of \$500.00.

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.

Preliminary Matters

6. The tenants 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 on 20 December 2019 and they have had 25 days to provide a response. 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.

Issue 1: Compensation for Damages - \$1569.75

Relevant Submissions

7. The landlord stated that he had entered into a monthly rental agreement with the tenants on 02 August 2018. The agreed rent was set at \$1100.00 per month and the tenants had paid a security deposit of \$500.00.
8. The landlord stated that the tenants were having difficulty paying their rent and he entered into an agreement with them that the tenancy would end at the end of September 2019.
9. The landlord stated that after the tenants vacated, he was required to carry out extensive cleaning at the rental unit and he also had to repair the patio door and the front storm door.
10. The landlord complained that the rental unit had been left in a very poor state after the tenants moved out and he was required to hire a professional cleaner to give the premises a deep clean. The landlord submitted an invoice showing that he was charged \$1322.50 to have that work carried out (█ #10).
11. The landlord stated that in the kitchen the floors were not cleaned and the refrigerator had not been cleaned out. He also stated that the bathroom had not been cleaned and the carpets in the 2 bedrooms were "filthy". He also testified that the cleaners had to pressure-wash the back deck as it was covered in dog feces and under that deck he found numerous bags of garbage and an old mattress.
12. In support of his claim for cleaning, the landlord submitted 23 photographs of the rental unit showing its condition after the tenants vacated (█ ##1-9). These photographs additionally show that the cupboards were dirty and there was a buildup of food in the trap in the dishwasher.
13. The landlord also complained that the tenants had damaged both the patio door and the storm door. Regarding the patio door, the landlord stated that screen in that door was torn and he suspected that that damage had been caused by the

tenants' dogs. He also stated that the frame of the screen door was dented and had to be repaired.

14. He also testified that the sliding window in the storm door had been damaged and it required a new sash.
15. The landlord submitted a receipt at the hearing (█ #11) showing that he was charged \$247.25 to have those 2 doors repaired.

Analysis

16. 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;

17. The landlord's evidence shows that the unit had not been adequately cleaned after the tenants had vacated and I accept his claim that he hired professionals to clean the carpets, remove garbage, pressure wash the deck and clean the remainder of the house. I also find the costs the landlord is seeking for cleaning are reasonable given the amount of work that would be required. As such, his claim for cleaning succeeds in the amount of 1322.50.
18. I also accept the landlord's claim that he had to repair the patio door and the storm door. Given that these doors were 7 and 12 years old, respectively, I find that, factoring in depreciation, he is entitled diminished award of \$175.00.

Decision

19. The landlord's claim for compensation for damages succeeds in the amount of \$1497.50, determined as follows:

• Cleaning	\$1322.50
• Garbage Removal	\$175.00
Total	<u>\$1497.50</u>

Issue 2: Rent - \$2800.00

20. The landlord stated that he had agreed to allow the tenants to pay their rent in 2 installments of \$550.00 each month.
21. He submitted rent records at the hearing (█ #12) showing the payments he had received from the tenants since they had moved into the rental unit.
22. These records show that in February 2019 the tenants started to fall behind in their rent payments. Although they continued to make regular payments to the landlord, there were several occasions were they missed their semi-monthly payment and the arrears had been gradually accruing since February 2019.
23. At the end of August 2019, the records show that the tenants were in arrears in the amount of \$1700.00. No payments were made in September 2019 bringing the total balance to \$2800.00.

Analysis

24. I accept the landlord's testimony in this matter and I find that the tenants have not paid rent as required. Based on his records, I find that the tenants owe \$2800.00 in rent.

Decision

25. The landlord’s claim for a payment of rent succeeds in the amount of \$2800.00.

Issue 3: Security Deposit

26. The landlord stated that the tenants paid a security deposit of \$500.00 on 02 August 2018. As the landlord’s claim has been successful, he shall retain the security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses


27. The landlord submitted a hearing expense claim for and a receipt for \$15.92 for the costs of serving tenants with the application by registered mail and a receipt for \$20.00 for the costs of filing this application. As the landlord’s claim has been successful, the tenants shall pay these hearing expenses.

Summary of Decision

28. The landlord is entitled to the following:

a) Compensation for Damages.....	\$1497.50
b) Rent.....	\$2800.00
c) Hearing Expenses	\$35.92
d) LESS: Security Deposit	(\$500.00)
Total Owing to Landlord	<u>\$3833.42</u>

28 April 2020
Date


John R. Cook
Residential Tenancies Tribunal