

Residential Tenancies Tribunal

Decision 19-0906-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:10 am on 24 February 2020 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.

Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$575.00.
4. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$1400.00,
 - An order for a payment of \$200.00 for the costs of cleaning,
 - An order for a payment of \$100.00 for the costs of replacing a garbage bin, 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*, policy 9-3: Claims for Damage to Rental Premises and

Issue 1: Compensation for Damages - \$1400.00

Relevant Submissions

The Landlord's Position

7. The landlord and tenant entered into a 1-year, fixed-term rental agreement on 01 July 2018 and both the landlord and the tenant submitted copies of that agreement with their respective applications. The agreed rent was set at \$1150.00 and the tenant paid a security deposit of \$575.00.
8. The tenant issued the landlord a 1-month termination notice at the end of September 2019 and he vacated on 31 October 2019.
9. The landlord stated that after the tenant vacated she was required to carry out some painting at the unit and she had to replace the carpet. She is seeking \$1400.00 in compensation.

Painting

10. The landlord stated that the whole unit was freshly painted before the tenancy began in 2018 and she complained that because of the conditions of the walls after the tenant moved out, she had to have the unit fully repainted again in 2019.
11. In support of her claim, the landlord submitted 6 photographs (█ #1-6) showing the walls after the tenant moved out. These photographs show that there is some dirt on some walls (█ #2, #3, #5), that there is a scuff on another wall (█ #1) and that there are a couple of holes in the walls (█ #4, #6). The landlord complained that the tenant had hung things on the walls and had mounted a TV.
12. The landlord stated that she hired a contractor to carry out some repairs at the unit after the tenant vacated and he also repainted the whole apartment. She submitted an invoice at the hearing showing that she was charged \$3317.75 to have that work completed. She stated that \$1000.00 of that amount was for painting.

Carpet

13. The landlord submitted a photograph at the hearing showing a Berber carpet and she stated that this photograph shows that the carpet suffered damage from the tenant's pet cat.

14. The landlord stated that this carpet was installed in 2003 and that although it was not new, it was in good condition when the tenant moved in.
15. The landlord stated that she was informed by a professional carpet cleaner that the carpet could not be cleaned and it should be replaced. As such, the landlord had the carpet removed and she installed hardwoods floors instead. The landlord is seeking \$400.00 for the costs of the carpet. No receipts or quotes were submitted at the hearing.

The Tenant's Position

Painting

16. The tenant acknowledged that there was some minimal damage caused to the walls where he had mounted a TV. However, he stated that he had plastered and sanded those holes and they were prepped to be painted.
17. Regarding the costs the landlord is seeking here, the tenant complained that the invoice does not show how much the landlord was charged for painting.

Carpet

18. The tenant stated that the carpets were "definitely not new" when he moved in and he pointed out that the landlord submitted no photographs showing the condition of the carpets when the tenancy began.
19. The tenant stated that, at the landlord's request, he shampooed the carpets before he vacated and he submitted a receipt showing that he had rented a carpet cleaner on 30 October 2019. He claimed that he had not shampooed the carpets because they were dirty, but only because he was trying to be a good tenant and because the landlord had requested that he have them cleaned.
20. Regarding the costs the landlord is seeking here, the tenant complained that she had presented no receipt to corroborate her claim.

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. The landlord's evidence does show that there is some dirt on the walls in the basement and hallway and that there is a scuff on the wall by the kitchen. There are also 2 holes in the walls, and 1 was plastered and sanded. But I find that that evidence is insufficient to justify an award for the costs of repainting the whole apartment.
23. A landlord ought to expect that there would be some nicks and scuffs on a wall after a 16-month tenancy as a result of normal wear and tear. And although 2 photographs show that there is some dirt on the walls, I don't see why they couldn't be cleaned, as opposed to being repainted. Regarding the 2 holes in the walls, I also find that they are the result of normal use.
24. As Donald Lamont states in Residential Tenancies "... there is the common law implied covenant to use the premises in a proper and tenant-like manner" which means "that the tenant will use the premises as if they were his own, and therefore he should not do or omit doing anything whereby damage is caused".

That is, hanging pictures and TVs on walls in a rental unit is “ordinary use” and the tenant cannot be held liable for repairs. Hence the landlord’s claim for the costs or repainting the unit does not succeed.

25. Regarding the carpet, I also find that the landlord’s claim for the replacement costs does not succeed. Firstly, I can detect no damage or soiling in the submitted photograph. Secondly, I agree with the tenant that the landlord has failed to establish the condition of the carpets when he moved in and she has failed to establish the replacement costs she is seeking here. Finally, a good grade carpet has an expected lifespan of 10 years, and given that these carpets were 16 years old, they had outlived their life expectancy and probably needed to be replaced anyhow.

Decision

26. The landlord’s claim for compensation for damages does not succeed.

Issue 2: Cleaning - \$200.00

Relevant Submissions

The Landlord’s Position

27. The landlord stated that after the tenant moved out she had to hire a cleaner to clean the apartment. She testified that it took her cleaner 20 hours to carry out that cleaning and she paid her \$200.00. No receipt was submitted at the hearing.
28. The landlord submitted photographs at the hearing (█ ##9-18) showing that she found some cat hair in the apartment, that there was some grit in the corner of the patio door and that there were crumbs and dirt in the cupboards. The photographs also show that the lint trap for the drying machine had not been cleared out and that there were some pushpins left on a window ledge. The landlord also pointed out that the tenant had left some recycling bags on the front porch.
29. The landlord also pointed to an e-mail from her property manager (█ #19) in which he states that there is cat hair in the windows, that the cabinets and drawers in the kitchen require cleaning, and that the oven needs cleaning. He also writes that some walls are dirty and that the detergent dispenser in the washing machine and the lint trap in the dryer need to be cleaned.

The Tenant's Position

30. The tenant stated that he had cleaned the apartment from top to bottom before he had vacated. He claimed that when he was moving and as he removed all of his possessions from each room, that room would be thoroughly cleaned.
31. Regarding the recycling that can be seen in Exhibit ■ #18, the tenant stated that he returned to the unit after the landlord had sent him that picture and he took that garbage away.

Analysis

32. The landlord's evidence shows that the unit was not perfectly cleaned after the tenant moved out. Based on her photographic evidence, I find that she is entitled to compensation for 6 hours of her personal labour.
33. Policy with this Section is that a landlord may claim up to \$19.40 in compensation for each hour of their personal labour.

Decision

34. The landlord's claim for the costs of cleaning succeeds in the amount of \$116.40.

Issue 3: Garbage Bin - \$100.00

Relevant Submissions

The Landlord's Position

35. The landlord stated that the tenant was provided with a municipal garbage bin when he moved in and the landlord complained that it was missing after he vacated and she surmised that he must have taken it with him when he was moving.
36. The landlord has not replaced that bin, but she claimed that she had read in the newspaper that the City of St. John's would charge \$100.00 for a replacement. No quote or newspaper article was submitted at the hearing to corroborate that claim.

The Tenant's Position

37. The tenant stated that he did not remove that bin when he vacated. He claimed that the bin went missing from the front of the house about a month before he vacated.

Analysis

- 38. I accept the tenant’s claim that he had not removed the bin when he was moving. No other evidence was presented to establish that the tenant was responsible for causing the bin to go missing and it is probable that it was stolen from the property.
- 39. As such, the landlord’s claim for the costs of replacing that bin does not succeed.

Decision

- 40. The landlord’s claim for the costs of replacing the garbage bin does not succeed.

Issue 4: Security Deposit - \$575.00

- 41. The tenant paid a security deposit of \$575.00 to the landlord on 23 June 2018. As the landlord’s claim for compensation cleaning has succeeded, the security deposit shall be disposed of as follows:
 - a) Refund of Security Deposit\$575.00
 - b) LESS: Cleaning Costs..... (\$116.40)
 - c) Total Owing to Tenant.....\$458.60

28 May 2020

Date

John R. Cook
Residential Tenancies Tribunal