

Residential Tenancies Tribunal

Decision 19-0908-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:10 am on 13 February 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] (“[REDACTED]”), [REDACTED] (“[REDACTED]”), [REDACTED] (“[REDACTED]”) and [REDACTED] (“[REDACTED]”), all participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the landlord”, also participated.

Issues before the Tribunal

3. The tenants are seeking an order for a refund of the security deposit in the amount of \$675.00.
4. The landlord is seeking an order for compensation for damages in the amount of \$3381.75 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 - \$3381.75

Relevant Submissions

The Landlord's Position

7. The landlord and tenants entered into a monthly rental agreement on 01 July 2017 and a copy of that executed agreement was submitted with the tenants' application (█ #1). The agreed rent was set at \$1350.00 per month and it is acknowledged in that agreement that the tenants had paid a security deposit of \$675.00.
8. The landlord and the tenants mutually agreed that the tenancy would end on 01 November 2019 and the tenants vacated on that date. No walkthrough was conducted when the tenants moved out and there is no report of an incoming or outgoing inspection.
9. The landlord stated that after the tenants moved out he discovered that the unit had not been adequately cleaned and the tenants had caused some damages to the unit during their tenancy. With his application he submitted the following breakdown of the costs to carry out repairs (█ #1):

• Cleaning	\$150.00
• Painting	\$1725.00
• Garbage removal.....	\$100.00
• Lawn repair.....	\$1086.75
• Shed floor	\$300.00
 Total.....	 <u>\$3361.75</u>

Cleaning

10. The landlord stated that the whole house was "rotten" after the tenants moved out. He stated that his property manager informed him that it was not in a fit state to be shown to prospective tenants and he was required to hire a cleaner to clean the unit at a costs of \$250.00. A copy of that invoice was submitted at the hearing (█ #2).
11. The landlord stated that the refrigerator had not been cleaned out and that the insides of the cupboards were dirty. He also complained that the door to the washing machine was dirty and he suspects it may have to be replaced. He also complained that the whole house smelled of weed and he stated that his current tenants found pipes in the unit. No photographs were submitted at the hearing showing the condition of the property after the tenants moved out.

Painting

12. The landlord stated that he had to have the whole unit repainted at the end of this tenancy and he submitted an invoice from his painter showing that he was charged \$2875.00 to have that work carried out (█ #3).
13. The landlord stated that the unit was last painted 8 years ago and the paintjob was in "fine" condition when the tenancy began. He complained that at the end of the tenancy he found that there were numerous spots on the walls and that when he removed the decorative stars that the tenants had affixed to a ceiling, the paint came off. No photographs were submitted at the hearing.

Garbage Removal

14. Besides the cleaning, the landlord complained that the tenants had left behind a significant amount of garbage at the property. He stated that there was a TV and TV stand left behind and that in the shed the tenants had left their lawn mover and snow blower. He also complained that the tenants left a steel drum on the lawn as well as a pile of wood.
15. The landlord stated that he spent about an hour collecting the garbage and he put the TV and stand in his car and brought it to his own home. He figures that he will have to make 2 trips to the dump to dispose of the remaining items. The landlord is seeking \$100.00 in compensation for collecting these items and disposing of them.

Lawn Repairs

16. The landlord stated that as part of their rental agreement, the tenants were responsible for lawn maintenance. He stated that he had to repeatedly remind the tenants to mow the lawn and he complained that they had let it grow over. He also complained that the tenant had placed their steel barrel on the lawn, which they used as a fire-pit, causing damage to the lawn.
17. In support of his claim the landlord submitted a photograph of the steel barrel, a photograph of the wood the tenants had been storing by the side of the shed, a photograph of lawn underneath the wood after it had been removed and a photograph showing a pile of grass the tenants had disposed of after they had mowed the lawn (█ #6).
18. The landlord stated that the lawn had new sod laid on it in 2018 and because of the damage caused by the tenants he now had to have that lawn repaired. He submitted a quote at the hearing (█ #5) showing that he will be charged \$1085.75 to have 3 treatments of fertilizer applied to the lawn, 2 applications of lime, 3 visits to apply weed killer, 2 lawn core aeration treatments and 2 seedings.

Shed Floor

19. The landlord submitted another photograph at the hearing (█ #7) showing █'s motorcycle in the shed. He claimed that █ had been changing the motorcycle's oil in that shed there were now oil stains on the shed's pressboard floor. He is seeking \$300.00 for the costs of replacing that floor. No quote or invoice was submitted at the hearing. The landlord stated that the shed was approximately 6 years old and he claimed that there were no oil stains on the floor when the tenants moved in.

The Tenant's Position.

20. █ stated that the unit was clean when they vacated. █ stated that he vacated the unit at the beginning of October 2019 and he submitted 3 photographs at the hearing (█ #2, #3) showing the condition of the property at that time.
21. █ also played a video at the hearing showing the condition of the unit on 31 October 2019. He argued that this video shows that the unit was clean on that day.

Painting

22. █ stated that the paintjob was already showing signs of significant wear and tear when they moved into the property. █ stated that in one of the rooms, there was already damage caused to a wall where the previous tenants had mounted a TV.

Garbage Removal

23. The tenants acknowledged that they had left behind the items described by the landlord. But █ stated that the landlord had replaced the dishwasher at the unit in October 2019 and the old dishwasher was left behind at the unit for the landlord to remove. █ stated that the landlord had informed the tenants that he would get a truck to remove the dishwasher and stated that if they had any large items they would like taken to the dump, he would remove it for them. █ also stated that he had given the wood for the fire pit to the tenants in the downstairs apartment.

Lawn Repairs

24. █ said that they had been regularly mowing the lawn. She claimed that there was one period of about 3 weeks when they hadn't mown the lawn, but that was because their lawn mover had broken.
25. █ stated that the steel barrel had not been placed on the lawn but had been placed on blocks so as not to damage the lawn. He denied that the tenants had caused any damage to the lawn and he claimed that the tenants from the

downstairs apartment were responsible for some of the damage because they let their pet dog defecate on the lawn causing the grass to burn.

26. He also pointed to copies of text-messages he had exchanged with the landlord showing that he was aware that the downstairs' tenant's had been leaving dog feces on the lawn and another text-message exchange in which the landlord complains about the poor job done by the person who laid the sods.
27. Regarding the costs the landlord is seeking here, █████ argued that the application of fertilizer, lime and weed killer is part of the landlord's annual lawn maintenance plan and is not their responsibility.

Shed Floor

28. █████ acknowledged that he had been changing his motorcycle's oil in the shed and he also acknowledged that although he had been using an oil pan and rags, some oil may have dripped onto the shed floor.
29. He argued, however, that the floor was already worn when the tenancy began and he stated that previous tenants may have been storing lawn mowers, snow blowers, ATVs or motorcycles in that shed before their tenancy began. He also complained that the landlord had not presented any quotes showing the costs he is seeking. █████ figured the floor could easily be sanded to remove those stains.

Analysis

30. 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

31. Regarding the cleaning, I find that the landlord has submitted insufficient evidence to justify an award. No photographs were submitted by the landlord showing that any cleaning was required and there was no report of an outgoing inspection. The tenants claimed that the unit had been cleaned before they vacated and except for some items that had been left behind at the property, their submitted video bears out that claim.
32. I also find that the landlord's claim for painting does not succeed. No evidence was submitted by the landlord showing that there was any damage caused to the walls at the unit and there was no report of an incoming or outgoing inspection. I am also unable to detect any damage to the walls in the video submitted by the tenants. I'll also point out that landlords are expected to repaint the walls in a rental unit every 3 to 5 years, anyhow, as a result of normal wear and tear from successive tenancies.
33. The tenant's acknowledged that they had left behind the items described by the landlord and in their own submitted video, some items can be seen in the closets and cupboards. I find that \$100.00 is a fair award for the costs of collecting this garbage and making 2 trips to the dump.
34. Regarding the lawn, I am also not persuaded that the landlord is entitled to an award. No photographic evidence was submitted by the landlord showing any damage caused to the lawn by the steel drum. I agree that there does appear to be some superficial damage caused to the lawn where the tenants had been storing their wood, but the quote submitted by the landlord does not seem to

address the issue of that damage or re-sodding but rather concerns, as [REDACTED] stated, annual upkeep routines like fertilizer and weed-killing.

35. I also find that the landlord's claim for the costs of replacing the shed floor does not succeed. He has not presented any evidence showing the condition of the floor when the tenancy began and he presented no evidence showing the costs of replacing the floor.

Decision

36. The landlord's claim for compensation for damages succeeds in the amount of \$100.00 for the costs of removing garbage.

Issue 2: Security Deposit

37. The tenants paid a security deposit of \$675.00 on 01 June 2017 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim for compensation for damages has been partly successful, the security deposit shall be disposed of as follows:

- a) Security Deposit\$675.00
- b) LESS: Compensation for Damages (\$100.00)
- c) Total Owing to Tenants\$575.00

13 May 2020

Date

[REDACTED]

John R. Cook
Residential Tenancies Tribunal