

## Residential Tenancies Tribunal

Decision 20-0094-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:05 am on 04 March 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 respondent, [REDACTED], hereinafter referred to as “the tenant”, also participated.

### Issues before the Tribunal

3. The landlord is seeking the following:
  - An order for a determination of the validity of a termination notice issued to him on 05 January 2020,
  - An order for compensation for damages in the amount of \$1100.00,
  - An order for a payment of rent in the amount of \$1100.00,
  - An order for a payment of \$565.00 for the costs of cleaning, and
  - Authorization to retain the security deposit of \$700.00.

### 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 sections 10, 18 and 31 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

## Issue 1: Cleaning - \$565.00

### Relevant Submissions

#### The Landlord's Position

6. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant, commencing 01 August 2014, and a copy of the executed lease was submitted at the hearing. The agreed rent was set at \$1100.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$825.00.
7. The landlord stated that the tenant informed him on 04 January 2020 that she was terminating her agreement and on the following day she sent him an e-mail stating that she would vacate by 31 January 2020.
8. The landlord complained that the tenant had not carried out any cleaning before she vacated and he, and a friend, had to spend 2 days, 10 hours each day, cleaning the property. He is seeking \$388.00 in compensation for 20 hours of his personal labour. He is also seeking \$100.00 for the costs of cleaning supplies. No receipt or quote was submitted at the hearing.
9. He claimed that he had to clean all the floors throughout the apartment and he complained that there was dog food and dog hairs found on the floors as well as various stains on the floors in the kitchen and laundry room. He also complained that the walls were dirty and that tenant had left decals on the walls. He also stated that the refrigerator and stove were left in a very dirty state.
10. In support of his claim, the landlord submitted photographs at the hearing (■ #4) showing the dog hair on the floors and in a heater, showing the dirt in the crisper drawers in the refrigerator and the inside of the oven. The photographs also show the various floor stains the landlord complained about and they show that there was a buildup of mold on a window.

#### The Tenant's Position

11. The tenant claimed that she kept the unit in a clean state during her tenancy and in support of that claim she submitted a letter from a social worker from the Department of Children, Seniors and Social Development (■ #1) in which she writes that she had carried out home visits every 4 months and she had no concerns about the cleanliness of the unit during those visits.
12. Regarding the floors, the tenant acknowledged that she had not swept or mopped them before she vacated, but she claimed that the stains identified by the landlord were there when she first moved into the unit. She also claimed that the decals that were left on the walls were removable and would not have caused any damage.

13. The tenant did concede that she had not cleaned the refrigerator or stove before she moved out and she acknowledged that the rust stain on the floors was from her shovel.

**Analysis**

14. The landlord’s evidence does show that the unit had not been properly cleaned before the tenant vacated and I accept his claim that there were dog hairs found throughout the unit and that the floors needed cleaning. The tenant also admits that she had not cleaned the refrigerator and oven before moving out.

15. However, the tenant stated that some of the stains the landlord complained about were there when she moved in and given that there is no report of an incoming or outgoing inspection, I find that the landlord has not submitted sufficient evidence to establish that these were caused by the tenant.

16. Based on the evidence, I conclude that the landlord is entitled to an award for compensation for 15 hours of his personal labour. Policy with this Section is that a landlord may claim up to \$19.40 for each hour of their personal labour. No evidence was submitted to show that he had spent \$100.00 on cleaning supplies, so that claim fails.

**Decision**

17. The landlord’s claim for the costs of cleaning succeeds in the amount of \$291.00.

**Issue 2: Compensation for Damages - \$1100.00**

**Relevant Submissions**

The Landlord’s Position

18. The landlord also complained that the tenant had caused some damages to the unit during her tenancy and he submitted the following breakdown of the costs to carry out repairs:

- Replace kitchen floor ..... \$350.00
- Paint/plaster ..... \$160.00
- Painting labour ..... \$230.00
- Window screen replacement ..... \$50.00
- Laundry room floor replacement ..... \$250.00
- 3 window blinds for doors ..... \$60.00
- Total ..... \$1100.00

### Kitchen Floor

19. The landlord stated that there was a stain on the kitchen floor that he had been unable to remove. He claimed that this floor now has to be replaced and he is seeking \$350.00 in compensation. No receipt or quote was submitted at the hearing.
20. The landlord stated that this is a vinyl, cushion floor and was about 10 years old.

### Painting

21. The landlord also stated that he was required to paint the walls in the two bedrooms as well as the railing on the stairs and he pointed to photographs which show that there is some dirt on the walls, that a patch of paint had peeled away in one of the rooms, and that there are scratches on the spindles on the railing.
22. The landlord is seeking \$160.00 for the costs of purchasing painting supplies, and he is also seeking \$230.00 in compensation for his labour to carry out the plastering and painting. No receipts were submitted at the hearing. The landlord stated that this work has not yet been completed.

### Window Screen

23. The landlord pointed to a photograph of a window screen which shows that there is a large hole in it. The landlord stated that this screen has to be repaired and he is seeking \$50.00 for those costs. That work has not yet been carried out and no quotes or receipts were submitted at the hearing.

### Laundry room floor replacement

24. The landlord pointed to a photograph of the laundry room floor which shows that there is a rust stain on it. He stated that this floor now needs to be replaced and he is seeking \$250.00 in compensation. No receipts or quotes were submitted at the hearing. The landlord stated that this floor was installed in 2014.

### 3 Blinds for doors

25. The landlord stated that there were 3 doors fitted with plastic mini-blinds and he complained that these blinds were all damaged after the tenant moved out and needed to be replaced. They have not yet been replaced, but the landlord stated that each set of blinds would cost about \$20.00. He stated that they were about 6 years of age.

## The Tenant's Position

### Kitchen Floor

26. The tenant stated that this stain was already on the floor when she moved in. She complained that the landlord is looking to renovate the unit and he wants her to pay for his renovations.

### Painting

27. The tenant stated that she had to carry out some painting in the unit during her tenancy and she pointed out that the two back bedrooms were not painted when she moved in, but only primed. She stated that the damage that the landlord is complaining about amounts to no more than normal wear and tear and she argued that after a 7 year tenancy, the landlord would have to repaint anyhow.

### Window Screen

28. The tenant acknowledged that she had cut a hole out of the window screen for her air-conditioner. She stated that she had left behind a roll of screen so that the landlord could carry out the repair himself.

### Laundry room floor replacement

29. The tenant acknowledged that this floor was installed just before she moved in and she did not dispute the landlord's claim that she had caused the rust stain. She argued that the floor did not need to be replaced, though, and the landlord could just clean the rust from the floor instead.

### 3 Blinds for doors

30. The tenant stated that the reason why the blinds were damaged was because the bottom of the blinds were not affixed to the doors. She complained that when she opened and closed these doors, the blinds would swing into the doors causing damage to the slats. She contested the costs sought by the landlord here and stated that these mini-blinds only cost \$7.00 each.

## **Analysis**

31. 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*

32. Regarding the kitchen floor, I find that the landlord's claim does not succeed. The tenant stated that this stain was there when she moved in and without a report of an incoming inspection, I find that the landlord had failed to establish that the stain was caused during this tenancy. He also submitted no receipts or invoices and I further find that he has failed to substantiate the costs he is seeking here. Furthermore, given that the floor was at least 10 years old, it had probably outlived its useful lifespan and would soon have to be replaced anyhow.
33. With respect to the painting, I agree with the tenant that the paintjob had outlived its expected lifespan and that the landlord would soon need to repaint the unit anyhow. I informed the landlord at the hearing that it is expected that landlords would repaint a rental unit every 3 to 5 years as a result of normal wear and tear.
34. The landlord submitted no receipts or quotes for the costs of repairing the window screen, so that claim also fails. Likewise for the costs of replacing the laundry room floor and the window blinds.

## Decision

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

### Issue 3: Validity of Notice

### Issue 4: Rent - \$1100.00

## Relevant Submissions

### The Landlord's Position

36. The landlord stated that according to the *Residential Tenancies Act*, as the tenant had not given him a full month's notice that she was terminating her rental agreement, he was entitled to a payment of rent for February 2020. The tenant had only given him notice on 05 January 2020 and the landlord argued that he is therefore entitled to a payment of \$1100.00 for February 2020.
37. Regarding his attempts to re-rent the property, the landlord claimed that he had the tenant place a "For Rent" sign in the window of the unit in late January 2020. He has not carried out any online advertising.

### The Tenant's Position

38. The tenant stated that she had given the landlord verbal notice that she was vacating several days prior to the 05 January 2020 e-mail, and she stated that her notice period came to 29 days.
39. The tenant pointed out that she was a long-term tenant of the landlord's and had caused him no issues during her tenancy.
40. She also argued that the landlord had not mitigated his damages as most of the damages for which he had been seeking compensation have not yet been repaired.

## Analysis

41. According to section 18 of the *Residential Tenancies Act, 2018*, where a tenant wishes to terminate a monthly tenancy, she is required to provide a landlord with a notice not less than 1 month before she vacates, and that date shall be last day of the rental period. That is, if the tenant wanted to terminate her agreement on 31 January 2020, she had to give the landlord notice on, or before, 01 January 2020.
42. In that respect, then, the landlord is correct in his reading of the *Residential Tenancies Act, 2018* and I agree with him that the notice the tenant had sent to him on 05 January 2020 is invalid as it was off by 4 days.

43. However, the *Act* does not state, contrary to the landlord's claim, that a landlord is automatically entitled to a payment of rent for following month where the termination notice does not meet these timeframe requirements.
44. Rather, what the *Residential Tenancies Act, 2018* states is that where a tenant does not terminate a rental agreement in accordance with that *Act*, she is considered to have abandoned the premises (cf. s. 31.(2)). It also states that the tenant is liable for any damages caused by the abandonment, including any loss of rental income, so long as the landlord had mitigated those damages "to the extent that a party to a contract is required by law to mitigate damages" (cf. s. 10.(1)4.).
45. The extent to which a party is required to mitigate damages is that he must take all reasonable steps to avoid or minimize the damages. In the case where the damages amount to the prospect of lost rental income, this would mean that the landlord would immediately and widely advertise the unit for rent so that he could put new tenants in place, and he would quickly repair any physical damages caused to the unit to have it ready for occupancy.
46. But I agree with the tenant that the landlord had not taken all reasonable steps to mitigate his damages. Although the tenant's termination notice was late by 4 days, the landlord still had 26 days to advertise the property for rent and his chances of securing new tenants would have been greatly increased had he started advertising sooner than late January 2020 and had he advertised more widely, say, by placing ads on Kijiji, etc. Furthermore, although the landlord complained about various damages at the unit, most of that damage had yet to be repaired by the date of the hearing, even though the tenant had moved out over 2 prior to that date.
47. For these reasons, the landlord's claim for compensation for lost rental income does not succeed.

## **Decision**

48. The termination notice issued to the landlord is invalid.
49. The landlord's claim for a payment of rent does not succeed.

## **Issue 5: Security Deposit**

### **Relevant Submissions**

#### The Landlord's Position

50. According to the submitted rental agreement (█ #1), the tenant had paid a security deposit of \$825.00. That agreement was dated 28 July 2014. The



landlord also submitted a copy of a receipt, dated 03 July 2016, showing that the tenant had paid a holding deposit of \$700.00 and he claimed that this was converted to a security deposit when the tenant moved in.

51. The landlord is seeking authorization to retain the security deposit.

The Tenant's Position

52. The tenant agreed that she had paid a security deposit of \$825.00. But she also claimed that she had paid an additional \$250.00 as a pet deposit. No receipt was submitted at the hearing.

**Analysis**

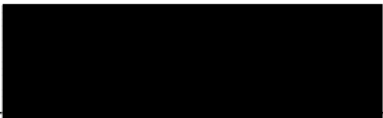
53. According to the submitted rental agreement, the tenant had paid a security deposit of \$825.00. No evidence was submitted by the tenant to corroborate her claim that she had paid an additional \$250.00 as a pet deposit. I also do not know why the landlord had a receipt for a holding deposit 2 years after the tenant had moved in and I disregard that evidence.

54. As the landlord's claim for cleaning has succeeded, the security deposit shall be disposed of as follows:

- a) Security Deposit ..... \$825.00
- b) LESS: Cleaning Costs ..... (\$291.00)
- c) Total Owing to Tenant ..... \$534.00

04 June 2020

\_\_\_\_\_  
Date

  
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John R. Cook  
Residential Tenancies Tribunal