

Residential Tenancies Tribunal

Decision 20-0233-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:09 am on 18 August 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”, did not participate.

Issues before the Tribunal

3. The landlord is seeking an order for compensation for damages in the amount of \$1248.43.

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 and rule 29 of the Rules of the Supreme Court, 1986.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach him by telephone. 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 a respondent fails to attend the hearing, Rule 29.11(1) states

that the hearing may proceed in the respondent's absence so long as he has been properly served. The landlord testified that she had served the tenant with notice of the hearing, by e-mail, on 06 July 2020 and a copy of that e-mail was submitted at the hearing. The landlord pointed out that the tenant's e-mail address was provided to her in the lease agreement. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

Issue 1: Compensation for damages - \$1248.43

Relevant Submissions

The Landlord's Position

7. The landlord stated that she had entered into a 5-month, fixed-term rental agreement with the tenant, commencing 10 December 2019, and a copy of the executed lease was submitted at the hearing. The agreed rent was set at \$475.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$150.00.
8. The tenant vacated the unit on 30 April 2020 when the lease expired.
9. The landlord stated that on 03 February 2020 the tenant had been cooking with a pot of oil on the stove and it had become so hot that it began to smoke. She testified that the tenant then removed the pot from the stove and, instead of placing on one of the cool, unused burners, the tenant placed it on the laminate countertop.
10. She testified that the pot was so hot that had burnt the countertop and had left a circular brown ring on it and had also caused there to be a tear in it. In support of her claim, the landlord submitted a photograph showing this damage. She also submitted a copy of an e-mail from the tenant, dated 03 February 2020, in which he writes: "I agree to be responsible for the burnt mark on the kitchen counter."
11. The landlord stated that this countertop was installed in 2017 and was in perfect condition when the tenant moved in. She has not yet had it replaced or repaired, but she submitted a copy of a quote from The Home Depot showing that it would cost \$1398.43 to have a new countertop installed.
12. The landlord calculates that if she retains the security deposit of \$150.00, the tenant owes her \$1248.43 (\$1398.43 less \$150.00).

Analysis

13. 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

14. I accept the landlord's claim that the tenant was responsible for causing damage to the countertop and I therefore find that he is responsible for the costs of carrying out repairs.
15. Laminate countertops have an expected lifespan of 15 years, and given that this countertop was already 3 years old when the tenancy ended, depreciation must be taken into account when calculating an award.
16. I also note that, on inspection of the submitted quote, it does not appear that The Home Depot had carried out a site inspection prior to issuing the quote and they

indicate that some of the quoted costs may not be necessary. For instance, they indicate that the plumbing costs (\$225.00) are optional and the fitting of the dishwasher (\$150.00) may not be required at all. The landlord presented no evidence at the hearing indicating that any plumbing was required in the replacement of the countertop and her 1 submitted photograph only shows a small section of the countertop and does not provide any comprehensive view of the kitchen set-up.

- 17. With these points in mind, factoring in depreciation, I find that the landlord is entitled to an award in the amount of \$818.74 (\$1398.43, less \$375.00 (\$225.00 + \$150.00), x 12/15 years remaining in lifespan).

Decision

- 18. The landlord’s claim for compensation for damages succeeds in the amount of \$818.74.

Issue 2: Security Deposit

- 19. The landlord stated that the tenant had paid a security deposit of \$150.00 on 11 December 2019 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord’s claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

Issue 3: Hearing Expenses

- 20. As the landlord’s claim has been successful, the tenant shall pay her hearing expense of \$20.00 for this costs of filing this application.

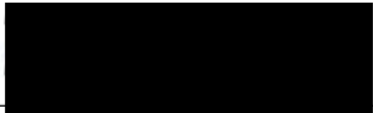
Summary of Decision

- 21. The landlord is entitled to the following

a) Compensation for Damages.....	\$818.74
b) Hearing Expenses	\$20.00
c) LESS: Security Deposit	(\$150.00)
d) Total Owing to Landlord	<u>\$688.74</u>

20 October 2020

Date


John R. Cook
Residential Tenancies Tribunal