

Residential Tenancies Tribunal

Application [REDACTED]
Application [REDACTED]

Decision 19-0387-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:15 pm on 10 June 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL. The hearing reconvened on 23 July 2019 and again on 16 September 2019.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing. She was represented by [REDACTED]. 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 \$543.75 and refund of rent in the amount of \$725.00.
4. The landlord is seeking an order for a payment of rent in the amount of \$725.00, compensation for damages totalling \$136.20, a payment of utilities in the amount of \$73.78, a payment of late fees and NSF fees in the amount of \$89.00, authorization to retain the security deposit and a payment for “other expenses” totalling \$90.27.

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 are sections 8, 10, 15, and 18 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

7. The landlord amended her application at the hearing and stated that she was now seeking a total of \$181.18 in compensation for damages and a payment of \$84.89 in utilities.
8. The landlord objected to [REDACTED] presence at the hearing and my decision to allow him to give sworn testimony alongside the tenant and to make arguments on her behalf. She argued that as [REDACTED] was providing testimony and evidence at the hearing, he ought to be regarded as a witness and should be restricted from the hearing until he was called for questioning.

Issue 1: Tenant Seeks Rebate of Rent - \$725.00

Issue 2: Landlord Seeks Payment of Rent - \$725.00

Relevant Submissions

The Tenant's Position

9. The tenant stated that she had entered into a 1-year, fixed-term rental agreement with the landlord, commencing 01 May 2017, and a copy of that agreement was submitted with her application ([REDACTED] #1). The agreed rent was set at \$725.00 per month and it was paid by post-dated cheques.
10. That agreement was renewed on 01 May 2018 and a copy of that renewed agreement was also submitted with the tenant's application ([REDACTED] #2).
11. The tenant stated that she informed the landlord in February 2019 that she was terminating her agreement at the end of April 2019. She stated that during that conversation she had also requested that the landlord provide her with a copy of the lease as a copy was not provided to her when she renewed her lease in 2018.
12. On 05 April 2019 the tenant stated that she was again speaking to the landlord and again informed her that she was moving at the end of that month and again requested a copy of the lease. The landlord provided her with a copy of the lease the following day.
13. Although it appears that the lease was originally set to end on 30 April 2019, that date was crossed off and "30 June 2019" had been inscribed over it. The tenant's initials are found next to this amendment to indicate that she was aware

of it, but she testified that she had no recollection of changing the agreement from 12 months to 14 months.

14. She also testified that although she had she indicated by her signature that she had received a copy of the *Residential Tenancies Act* and a copy of the rental agreement, she denied that these documents were provided to her by the landlord.
15. The tenant stated that she vacated the unit on 30 April 2019 and she left a voicemail message for the landlord on that date looking to make arrangements to meet and exchange the keys.
16. The landlord cashed the rent cheque for May 2019 and the tenant argued that that payment ought to be returned to her. She pointed out that she had twice given the landlord notice that she was vacating on 30 April 2019 and she did not reside at the unit during the month of May 2019.
17. Even though she has no recollection of it, she also conceded that she had obviously agreed that the tenancy would run until 30 June 2019. But she argued that that agreement is invalid as the *Residential Tenancies Act, 2018* only recognizes leases of 1-year.
18. The tenant is seeking an order for a return of the rent that had been paid for May 2019: \$725.00.

The Landlord's Position.

19. The landlord stated that when she had originally drafted the second lease, she wrote that it would run for 12 months but it was at the request of the tenant that the expiration date was extended by 2 months. The landlord stated that the tenant was seeking an extra 2 months for work-related reasons. She also stated that the tenant had provided her with 14 post-dated cheques at the time the lease was renewed.
20. The landlord stated that she had received no notice from the tenant that she would be moving at the end of April 2019 and she denied that the tenant had given her any verbal indication, either at the end of February 2019 or on 05 April 2019, that she would be moving out.
21. The landlord testified that she was out of town when the tenant vacated, and she only discovered that she had moved when she checked her telephone messages in early May 2019.
22. As the tenant had not given her a proper termination notice, as required under the *Residential Tenancies Act, 2018*, the landlord deemed the apartment abandoned and she took possession on 07 May 2019 after posting the appropriate notice (█ #2).

23. The landlord stated that as soon as she took possession of the rented premises she started advertising the apartment and she submitted copies of those advertisements at the hearing (█ ##3-18).
24. The landlord stated that she had already deposited the rent cheque for May 2019 by the time she had discovered that the tenant had moved out.
25. The landlord also had received from the tenant a post-dated cheque for June 2019 and that cheque was submitted into evidence (█ #1). Although that cheque had not been cashed, the landlord argued that she is entitled to rent for both May and June 2019 as the tenant had not given her any termination notice and as the tenancy was not set to expire until the end of June 2019.
26. The landlord is seeking an order for a payment of rent for June 2019: \$725.00.

Analysis

27. Section 8 of the *Residential Tenancies Act, 2018* states:

Types of rental agreement

8. (1) A landlord may enter into a rental agreement where a residential premises is rented

(a) from week to week;

(b) from month to month; or

(c) for a fixed term of not less than 6 months.

(2) Where a residential premises is rented for a period that is

(a) less than one week, the residential premises shall be considered to be rented from week to week;

(b) more than one week and less than 6 months, the residential premises shall be considered to be rented from month to month; and

(c) more than 12 months, the residential premises shall be considered to be rented for a fixed term of 12 months.

(3) Where a tenant continues to use or occupy a residential premises after a fixed term has expired, and notice of termination of the rental agreement

(a) has not been given, the relationship of landlord and tenant shall continue under the terms and conditions in the rental agreement, but the tenancy may be terminated by giving notice in accordance with paragraph 18(1)(b) or 18(2)(b); or

(b) has been given, the relationship of landlord and tenant shall continue under the terms and conditions in the rental agreement until the expiration of the notice period.

28. I accept the testimony and evidence submitted by the landlord concerning the agreement she had entered into with the tenant to extend the lease by 2 months, from a 12-month term to a 14-month term.
29. However, according to section 8.(2)(c), quoted above, any agreement that specifies a term longer than 12 months is considered to run 12 months only, and therefore, this agreement was set to expire on 30 April 2019.
30. I also accept the landlord's claim that she had received no written notice from the tenant indicating that she was terminating her agreement, as required by section 18 of the *Residential Tenancies Act, 2018*, whose relevant subsections state:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

...

(b) not less than one month before the end of a rental period where the residential premises is rented from month to month; and

(c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.

...

(9) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the person providing the notice;

(b) be given not later than the first day of a rental period;

(c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and

(d) be served in accordance with section 35.

31. If the tenant had wished to terminate her agreement on 30 April 2019, the day the lease expired, she was required to give the landlord a 2-month written notice, as required by s. 18.(1)(c). That is, such a notice would have to have been given to the landlord sometime prior to 01 March 2019.
32. As no written termination notice was issued to the landlord before the lease expired, on 01 May 2019 the lease reverted to monthly tenancy, meaning that the tenant now only had to give the landlord a 1-month notice under section 18.(1)(b).
33. Where a tenant vacates rented premises without first giving a proper termination notice, she is considered to have abandoned the property and she is liable for any damages caused by the abandonment, including any loss of rental income suffered by the landlord, so long as the landlord mitigated her losses by trying to secure new tenants.
34. In awarding rent-in-lieu of notice, policy with this Section is that the landlord would be entitled to compensation for lost rent for the period that is equivalent to the required notice period. For example, if a tenant abandons the rented premises in the middle of a fixed-term lease, the tenant could be liable for any loss of rent up to the date the lease is set to expire. In a monthly tenancy, a landlord may claim 1-month's rent-in-lieu of notice, as the tenant is required to provide her with a 1-month notice that the tenancy is ending.
35. Were this lease to expire on 30 June 2019, I would agree with the landlord that she is entitled to rent-in-lieu of notice for both May and June 2019 as the unit sat vacant during that time despite her efforts to re-rent it. However, as this lease is considered to have ended on 30 April 2019, I find that when the tenant abandoned the premises the agreement was then running on a monthly basis and the landlord is therefore only entitled to rent-in-lieu of notice equivalent to 1-month's rent: \$725.00.
36. Accordingly, I find that the landlord is only entitled to keep the rent that she had received when she cashed the post-dated cheque for May 2019.

Decision

37. The tenant's claim for a refund of May's rent does not succeed.
38. The landlord's claim for a payment of rent for June does not succeed.

Issue 3: Utilities - \$84.89

Relevant Submissions

The Landlord's Position

39. The landlord stated that after the tenant moved out she had the electricity account taken out of her name and the landlord was charged for the electricity usage in the apartment after 30 April 2019.
40. The landlord submitted 2 bills at the hearing showing that she was charged \$27.45 for the period between 30 April and 23 May 2019 (█ #19) and \$45.10 for the period between 23 May and 21 June 2019 (█ #20).
41. The landlord calculates that she is owed \$84.89 for the period from 01 May to 30 June 2019.

The Tenant's Position

42. The tenant claimed that she properly terminated the rental agreement by giving verbal notice in February and April 2019.
43. She argued that as she was no longer residing at the unit after 30 April 2019 she cannot be held responsible for the costs of electricity after that date.

Analysis

44. For the same reasons outlined in the previous section, I find that the tenant is responsible for the costs of electricity up to 31 May 2019.
45. I calculate the amount owing to be \$41.49 (\$27.45 for the period from 30 April to 23 May 2019 and \$14.04 for the period from 23 May to 31 May 2019 ($\$45.10 \div 29 \text{ days} = \$1.56 \text{ per day} \times 9 \text{ days}$)).

Decision

46. The landlord's claim for a payment of utilities succeeds in the amount of \$41.49.

Issue 4: Late Fees and NSF Fees - \$89.00

The Landlord's Position

47. The landlord stated that in June 2018 the rent cheque that the tenant had given to her (█ #22) was returned to her by her bank for the reason of "not sufficient funds" (NSF). The rent cheque for April 2019 (█ #21) was returned for the same reason.

48. In both cases, the landlord was charged an NSF fee of \$7.00 by her bank and she is seeking to be reimbursed for that \$14.00.
49. The landlord has also assessed late fees in the maximum amount allowed by the *Residential Tenancies Act, 2018*: \$75.00. She testified that after the rent cheque for June 2018 was returned to her by her bank, the tenant failed to pay that rent to her until 13 July 2019.

The Tenant's Position

50. The tenant did not deny that these cheques had bounced, but she claimed that it was the landlord's fault.
51. The tenant complained that although the cheques were dated for the 1st of each month, the landlord sometimes did not deposit the cheques until several days later and by that point the tenant had already used some of the money that had been set aside for rent. She argued that had these cheques been cashed on the 1st, the landlord would have received her rent.
52. She also complained that the landlord was very hard to get a hold of and would not return her calls.
53. The tenant also complained that the landlord had deposited both of her rent cheques for January and February 2019 in January 2019 and her account went into overdraft. She stated that she was charged overdraft fees by her bank but she nevertheless has decided not to pursue that matter through this Tribunal.

Analysis

54. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

(2) Where a cheque for the payment of rent is returned to a landlord by a financial institution because of insufficient funds, the landlord may charge the tenant a fee in the same amount as the fee charged to the landlord by the financial institution.

55. Regarding the late fees, the minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

56. The evidence submitted by the landlord shows that 2 rent cheques were returned to her because of insufficient funds and she was charged \$14.00 by her bank.

57. I don't accept the tenant's argument that the reason these cheques bounced was because the landlord had not cashed them in time. The returned cheque for June 2018 was processed by the bank on Monday, 04 June 2018. It seems likely to me that the cheque was deposited on 01 June 2019 and was then returned to the landlord, after the weekend, on 04 June. The returned cheque for April 2019 was dated 02 April 2019 and I also find it probable that it was deposited on 01 April and then returned to her the following day after it bounced.

58. As the tenant had not paid the late fees or the NSF fees to the landlord, as required by her lease, she has therefore been in rental arrears since 02 June 2018 and the landlord is entitled to the maximum late fee of \$75.00 set by the minister.

Decision

59. The landlord's claim for NSF fees succeeds in the amount of \$14.00.

60. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 5: Compensation for Damages - \$181.18

Relevant Submissions

The Landlord's Position

Blinds

61. The landlord submitted 2 photographs at the hearing (■■■■#23, #24) showing that 2 sets of mini-blinds had been damaged by the tenant during her tenancy.

62. The landlord stated that these blinds were 2 years old when the tenancy began and were in good condition.
63. The landlord has replaced these 2 sets of blinds and she submitted a copy of a receipt at the hearing (█ #25) showing that she was charged \$114.98.

Cleaning

64. The landlord stated that she was also required to carry out 4.5 hours of cleaning after the tenant moved out. The landlord is seeking compensation for 3 of those hours.
65. The landlord stated that the tenant had not adequately cleaned the floors and these had to be scrubbed to get the dirt off. The landlord submitted 6 photographs showing dirt on different sections of the floor throughout the unit (█ ##29-34).
66. The landlord also submitted photographs showing that the oven and the stove had not been cleaned by the tenant (█ ##26-28). She stated that she had to use 3 cans oven cleaner to get it clean.
67. The landlord is seeking \$57.00 in compensation for 3 hours of her labour to carry out this cleaning and \$9.20 for 3 cans of oven cleaner.

The Tenant's Position

Blinds

68. The tenant acknowledged that the blinds were damaged during her tenancy by her cat and she stated that she was willing to pay for the costs of replacing the blinds.
69. The tenant claimed that the blinds were old when she moved in and she also argued that the costs the landlord is seeking here is excessive. She submitted a screenshot from a █ website showing that one could purchase a vinyl roller shade for \$19.99 + tax.

Cleaning

70. The tenant stated that after she had removed all of her possessions from the premises she returned and spent 5 hours thoroughly cleaning the apartment.
71. She did acknowledge, though, that she had overlooked the oven and stove.
72. With respect to the floor, however, the tenant claimed that she had cleaned it before she vacated and she claimed that the unit was in better condition when she vacated than it was when she moved in. She stated that she had to carry

out a significant amount of cleaning when she moved in and she pointed out that there was no report of an incoming or outgoing inspection.

Analysis

73. 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;

74. With respect to the blinds, it is not disputed that these were damaged by the tenant during her tenancy and I therefore find that she is liable for the costs of their replacement. Mini-blinds have an expected lifespan of 10 years and given that these blinds were 4 years old when the tenancy ended, I find that the landlord is entitled to a depreciated award of \$69.00 ($\$114.98 \div 10 \text{ years} = \$11.50 \text{ per year} \times 6 \text{ years remaining} = \69.00).
75. Regarding the cleaning, the photographs submitted by the landlord do show that the stove and oven required cleaning and the floors do appear to be dirty in both the landlord's and the tenant's photographs. The landlord had also submitted into evidence an incoming condition report, signed by the tenant on 03 May 2019, and there is no indication on that report that the unit was dirty when the tenancy began as the tenant claimed. I find that the landlord is entitled to the \$66.20 she is seeking here.

Decision

76. The landlord's claim for compensation for damages succeeds in the amount of \$135.20, determined as follows:
- Blinds\$69.00
 - Cleaning.....\$66.20
 - Total\$135.20

Issue 6: "Other Expenses" - \$90.27

Relevant Submissions

The Landlord's Position

77. In February 2019, the tenant had been complaining about a leaking sink in the rental unit. The landlord contacted plumbers about the matter and they indicated to her that her pipes may have frozen. Thinking this was an emergency, the landlord send her maintenance worker and a plumber to the rental unit.
78. The maintenance worker reported that her keys were not working and he also stated that when the tenant came to the door she turned him away and indicated that it was not a convenient time for them to carry out any repairs.
79. The landlord stated that over the next several days she made numerous attempts to contact the tenant but she would not return her calls. Thinking it was an emergency, and being unable to gain entry to the unit, the landlord had a locksmith change the locks and she left an envelope at the unit for the tenant containing the new keys.

80. The landlord stated that she has subsequently learned that the tenant had changed the locks to the unit several months beforehand, without her permission, and she had not provided her with a key.
81. The landlord stated that she was charged \$90.27 to have the locks changed.

The Tenant's Position

82. The tenant stated that she had locked herself out of her apartment and in order to not disturb the landlord, she had a locksmith come to the unit to allow her to gain entry and she had the locks changed at that time.
83. The tenant acknowledged that she had not provided the landlord with a copy of that key.
84. She argued, however, that the reason she had not provided the landlord with a key was because the landlord had tried to allow 3 plumbers into her unit to repair the leaking sink without first giving her notice that they would be coming to the apartment. She stated that in the country where she is from it is very dangerous to allow unknown men into one's home and she testified that this incident had frightened her.
85. The tenant stated that she was fearful that if she provided the landlord with a key she would again try to enter her apartment with no notice.

Analysis

86. Section 10 of the *Residential Tenancies Act, 2018* outlines the statutory conditions that govern every rental agreement and statutory condition 6 states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

6. Entry Doors - Except by mutual consent, neither the landlord nor the tenant shall, during the use or occupancy of the residential premises by the tenant, alter a lock or locking system on a door that gives entry to the residential premises.

87. It was not disputed that the tenant had changed the locks to the rental unit, without the landlord's consent and she had not provided her with a key, in violation of statutory condition 6.
88. Landlord's have a right to access properties they rent out for a number of reasons, including entry for regular inspections, entry to show the property to prospective tenants and to carry out repairs.
89. I accept the landlord's testimony that in late February and early March 2019 she was unable to exercise her right to enter to the unit to carry out the repairs that the tenant had requested and she had to resort to hiring a locksmith to change the locks to the unit. For that reason, the landlord's claim succeeds.

Decision

90. The landlord's claim for the costs of hiring a locksmith succeeds in the amount of \$90.27.

Issue 7: Security Deposit

91. The tenant paid a security deposit of \$543.75 on 01 May 2017 and receipt of that deposit is acknowledged in the submitted rental agreements. As the landlord's claim has been partly successful, she shall retain that portion of the security deposit as outlined in this decision and order and return the remaining portion to the tenant.

Issue 8: Hearing Expenses

92. The landlord and the tenant each paid a fee of \$20.00 to file these applications. Policy with this Section is that an applicant would only be able to claim the filing fee as a hearing expense if they were awarded an amount that was greater than the security deposit. As such, both of their claims for hearing expenses do not succeed.

Summary of Decision

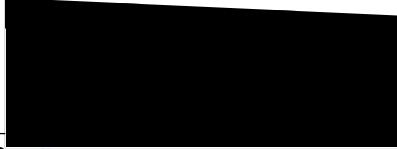
93. The tenant is entitled to the following:
 - a) Refund of Security Deposit.....\$543.75
 - b) LESS: Utilities (\$41.49)
 - c) LESS: Late Fees and NSF Fees (\$89.00)


- d) LESS: Compensation for Damages (\$135.20)
- e) LESS: Locksmith..... (\$90.27)

- f) Total Owing to Tenant.....\$187.79

14 November 2019

Date



Joh 
Residential Tenancies Tribunal