

Residential Tenancies Tribunal

Application [REDACTED]
Application [REDACTED]

Decision 2020-0243-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called on multiple sittings and last heard at **9:30 am** on **21 April 2021** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The applicant, [REDACTED] hereafter referred to as the tenant participated in the hearing. (*Affirmed*)
3. The respondent, [REDACTED] hereafter referred to as the landlord participated in the hearing. (*Affirmed*)
4. The details of the claim were presented as a written fixed term agreement set to expire on 30 April 2020 and rent set at \$675.00 per month. The landlord testified that utilities were included and rent was due on the 1st of each month. A security deposit in the amount of \$785.25 was collected on or about 01 May 2019 and remains with the landlord.
5. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The affidavit submitted by the tenant shows that the landlord [REDACTED] was served with the notice of this hearing on the **08 September 2020** by serving the application for dispute resolution document to the landlord to the email address: [REDACTED].
7. The affidavit submitted by the landlord shows that the tenant [REDACTED] was served with the notice of this hearing on the **13 September 2020** by serving the application for dispute resolution document to the tenant [REDACTED] at the email address: [REDACTED].
8. Subsequent service requirements were completed by Residential Tenancies.
9. During the 21 April 2021 sitting of this claim, the tenant amended the claim:
 - a. To remove the claim for Damages in the amount of \$5750.00.
 - b. To remove from the claim and amount for Other “lost wages” in the amount of \$1400.00.
10. During the 21 April 2021 sitting of this claim, the landlord amended the claim:
 - a. To remove the claim for OTHER “cleaning” in the amount of \$160.00.

Issues before the Tribunal

11. The tenant is seeking the following:
 - a) Refund of Rent **\$2025.00**;
 - b) Compensation for Inconvenience **\$2700.00**;
 - c) Return of Possessions **\$4000.00**;
 - d) Hearing Expenses;
 - e) Refund of Security Deposit **\$785.25**
12. The landlord is seeking the following:
 - f) Rent Owing **\$13,930.00**;
 - g) Other **\$16,199.92**
 - h) Hearing Expenses;
 - i) Application of Security Deposit

Legislation and Policy

13. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.

14. Also relevant and considered in this case are:
 - a. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*, and;
 - b. *Policy 9-2 Claims and Counter Claims*, and;
 - c. *Policy 9-3 Claims for Damage to Rental premises*.

Issue 1: Rent Owing - \$13,930.00 / Refund of Rent - \$2025.00

Relevant Submissions

Refund of Rent:

Tenant Position

15. The tenant testified that she is seeking **\$2025.00** as rent to be refunded for the below periods:
 - a. The period of May 1 – 15, 2019 (Claims the apartment was not ready to Occupy). **(\$337.50)**
 - b. The period of Sept 19, 2020 to Nov 30, 2020 (Didn't occupy the property because of Toxic Black Mold) **(\$1687.50)**
16. The tenant testified that she vacated the rental property on 19 September 2020 after it was noticed by Hubley's Plumbing that there was what she referred to as "Black Mold" in the property. The tenant testified that she was advised by the plumber who attended to "*leave the property immediately*". The tenant further testified that she was advised by a staff member of Metro Property Management to leave the unit as it wasn't safe to live in.
17. The tenant did not provide any evidence to these statements in either the form of a written statement, email or called the parties as a witness in the matter.
18. The tenant further testified that at the beginning of the tenancy (May 1, 2019) she was delayed moving into the property as it wasn't ready. The tenant testified that the property was dirty and there were exposed bulbs without shades. The tenant stated that she paid for the period of May 1 – 15, 2019 but did not move in until May 15, 2019.
19. As a result of the inability of the tenant to live in the unit, she is seeking a refund of rent paid on the property.

Landlord Position

20. The landlord testified that the tenant failed to provide any notice to anybody that she was leaving the property until May 2020. The landlord testified that he received rent from the tenant for September, October and November as required by the rental agreement.
21. The landlord submitted into evidence a copy of the Incoming inspection report (**Exhibit L # 1**) completed by [REDACTED], which clearly shows that areas of the rental unit were not clean and ready for occupancy at the onset of the tenancy.
22. Further, the landlord referred to emails from both [REDACTED] and [REDACTED] stating that nobody from their respective companies informed the tenant to leave the property immediately or that it was unsafe to live in the unit (**Exhibit L # 3**). Both emails indicate that such statements are not within their mandate or authority.

Rent Lost:

Landlord Position

23. The landlord testified that he could not rent the property after the tenant left as the tenant's belongings were left in the unit. The landlord is claiming for the period of 01 January 2020 to 31 July 2020 at a rate of \$1990.00 per month for 7 months totaling \$13,930.00 as lost rent.
24. The landlord testified that work could not commence on either of the two units as the tenant's belongings remained in the lower unit. He further stated that several attempts had been made to have the tenant recover her belongings.
25. The landlord testified that there was no black mold in the property but there was mold and questions its arrival in the unit.

Tenant Position

26. The tenant disputes the claim of the landlord for lost rent. The tenant claims that the landlord was to remove the belongings, clean them and return them for her to move back into the property. She further added that her rent is \$675.00 per month and not \$1990.00 as is in the claim of the landlord.

Analysis

27. I have reviewed the testimony and evidence of the landlord and tenant in this portion of the claim.

28. The basis of the tenant's claim for refund of rent is that the property wasn't ready for occupancy for the first two weeks and was forced to leave due to toxic black mold in her property, yet continued to pay rent.
29. In this matter, the tenant is required to show on the balance of probabilities that her version of events is more likely to have happened. The tenant has testified that she was advised by the Property Manager and Plumbers to vacate the property because it wasn't habitable yet there was no evidence presented to support that she was advised of this.
30. The evidence regarding the presence of mold is also clear. The [REDACTED] Laboratory report shows the presence of mold spores and the pictures presented also demonstrates the presence of mold. However, the presence of mold does not automatically indicate that the quantities are dangerous or even the types of spores present are dangerous. The parties have upped the technical scope of this hearing by introducing a laboratory analysis report of fungal spores present in samples and have not supported the data from this report with any technical expertise to explain the results.
31. The tenant has insisted that there is toxic black mold present at high levels as indicated on the report. Not surprisingly, the landlord has indicated the lack of presence of toxic black mold spores. This tribunal is not an expert in mycological studies and would rely of the evidence to guide a decision. Both parties have failed to guide the data and present the evidence in an understandable fashion, other than for them to have their own opinions without corroboration.
32. I find that there was no conclusive evidence that the property was deemed not habitable with evidence of same and further there was no evidence that the tenant was ordered out of the property by an authority capable of ordering such a thing. I find that the tenant vacated the unit on her own accord and failed to provide formal notice for the period in question. The tenant's claim for a refund of rent for the period 19 September 2019 to 30 November 2019 does not succeed.
33. Regarding the period of May 1 to 15, 2019, it is clear that the property was not ready for occupancy given the cleanliness as was indicated by the move in condition report completed by the property manager. I'm not sure if it was the owner or the Property Manager who fell down on the job at the beginning of this tenancy as the details of the business arrangement between the two is not clear. Either way, someone, other than the tenant, didn't complete their end of the contractual obligation with the tenant.
34. The landlord's argument that this item should have been addressed at the beginning of the tenancy might very well be systematically accurate, however, the legislation section 10 (1) 1., provides that the landlord is required to maintain the property in a good state of repair. Clearly this was not the case and caused a delay of entry by the tenant into the unit, yet rent was collected by the landlord. I find these actions of the landlord to be wrong. I find that the tenant's claim for a refund of rent for the period of May 1 – 15, 2019 is successful in the amount of **\$337.50.**

35. Regarding the landlord's claim for rent lost. The landlord has indicated that the tenant left her belongings in the unit and the landlord was unable to complete and repairs because of the belongings. The text communications between the two parties indicates that there was some sort of initial discussions of the landlord removing the belongings of the tenant and cleaning them. As this dispute progressed, that never happened. Evidence suggests that the landlord eventually applied for authorization to dispose of the belongings (**Exhibit L # 4**) and was granted this permission to dispose on 18 September 2020. By this application to dispose, it is obvious that the landlord is familiar with the process of abandoned personal property and the means to dispose/store the items. It is apparent that the landlord simply didn't want to deal with abandoned personal property and appears that a stand was taken to obtain the order to dispose and hope that the tenant came to collect her belongings. Again, as the dispute escalated, the landlord decided to add the charges to pack and store the items of the tenant.
36. The legislation clearly allows the landlord to charge reasonable storage fees and reasonable costs to move the items to storage. It is clear that the landlord left the items in the unit beyond the required 30 days storage requirement which is the time period a calculation of storage would be permitted. The landlord has demonstrated the cost of reasonable market storage fees with the invoice from U-Haul Storage at \$206.94 per month. There is another section in this claim for the storage fees and any award for this will be addressed there.
37. There was at least some discussions with the tenant or removal and cleaning of items with the tenant. Perhaps not a definitive contractual obligation but discussions that could give cause for the tenant to reasonable think that the landlord was addressing the discussions and a reason not to remove the belongings. The landlord had the control of the happenings and opted not to file for disposal of the items until 24 July 2020. The landlord cannot sit back and not reasonably act when the means of action are provided for under legislation and later claim loss of rent because of the delay. The landlord's decision to delay action eliminated any claim of lost rent as the landlord has failed to mitigate a potential loss. The landlord's claim for lost rent fails.

Decision

38. The landlord's claim for lost rent fails.
39. The tenant's claim for refund of rent succeeds in the amount of **\$337.50**.

Issue 2: Compensation for Inconvenience - \$2700.00

Relevant Submissions

Tenant Position

40. The tenant testified that as a result of mold issue in the landlord property, many personal items were damaged or lost because they were contaminated with mold.
41. The tenant estimates the costs as:
- | | |
|----------------------------|------------------|
| a. Personal hygiene items: | \$1250.00 |
| b. Personal Clothing: | 750.00 |
| c. Food Items: | 500.00 |
| d. Sanitation items: | <u>200.00</u> |
| e. Total: | \$2700.00 |
42. The tenant testified that there were no receipts for the lost items and there were no estimates to present. The tenant offered photos of the personal items in the [REDACTED] (Exhibit T # 5).
43. The tenant further indicated that there was no tenant insurance to cover the loss.

Landlord Position

44. The landlord disputes this portion of the claim stating that it was apparent to him that everything started on 08 October 2019 and that her possessions were in good shape on 19 September 2019 when she left the property. The landlord questions why he is responsible for mold on 08 October 2019 as what he described as “outside the tenancy”.

Analysis

45. A claim for compensation for an inconvenience is not an automatic award by any stretch of the imagination. The tenant is seeking an award for a loss due to mold. The hardest burden of proof for the applicant in this type of claim of showing liability. Was the landlord (in this case) aware of a situation that led to the damage being claimed and was the landlord negligent in his/her actions in dealing with the situation.
46. From the evidence of this case it is clear that when the landlord was made aware of a potential problem (leak), efforts were made to reasonably rectify the problem. The landlord sent in the plumbers, followed by a restoration company, completed air quality tests and also specialized lab testing to identify any pathogens present. All of this takes time and certainly there will be upheaval.

47. We know that the tenant did not have a tenant's insurance package, which would most likely have covered her belongings in this matter. It is unfortunate she did not have the insurance.
48. There is no doubt that there was some kind of mold present, but was the landlord aware of a problem and negligently failed to act to rectify the situation. The evidence that has been led does not point to that situation in any regard. As such, I cannot find that the landlord willfully or negligently acted and caused the loss of the items being claimed by the tenant. Further, the tenant has also failed to provide any sort of valuation for the items in the form of invoices or estimates. As such, I find the tenant's claim for compensation for inconvenience fails.

Decision

49. The tenant's claim for compensation for inconvenience fails.

Issue 3: Return of Possessions- \$4000.00

Relevant Submissions

Tenant Position

50. The tenant testified that she is seeking the return of her personal belongings that she left in the unit when she left on 19 September 2019. The landlord testified that she has no formal list of items.
51. The tenant referred to the "Decontamination Quote" (**Exhibit T # 3**) for costs. The tenant stated she simply wants her items returned that she hasn't seen in over a year.

Landlord Position

52. The landlord testified that the cost of storage was at \$6185.00 as of July 2020. The landlord further added that the tenant herself has extended this process by refusing to take her possessions (**Exhibit L # 3**) as documented in an email to [REDACTED].
53. The landlord further added that as of 29 July 2020, an affidavit of abandoned items was filed and permission to dispose of the items was granted by the Director of Residential Tenancies on 18 September 2020. (**Exhibit L # 4**).

Analysis

54. I have reviewed the testimony and evidence of the landlord and tenant in this portion of the claim. The landlord applicant is required to establish three criteria for a successful claim as follows:
 - a. Show that the damage exists
 - b. Show that the respondent is liable
 - c. Show a valuation for the repair or replacement
55. The tenant is seeking her personal belongings returned and the evidence is clear that the landlord has attempted to provide her belongings as requested. The tenant has held out for what appears to be for the landlord to clean her belongings. This confused the situation at first.
56. The tenant has knowledge of where her belongings are being stored. Similarly, the tenant has direct knowledge who has the ability to release them. It is apparent that the tenant has not made adequate arrangements to recover the property.
57. The legislation provides that the tenant is subject to reimburse the landlord for reasonable cost to store the property as required by the legislation which is for 30 days. We know from evidence that the landlord stored the items in the property from September 2019 onward and we know that his eventual market storage fees per month were \$206.94 at the local U-Haul Storage facility. This would be considered reasonable storage fees for the 30 days required by legislation. Any charges beyond that would be the result of the landlord making a decision to store longer.
58. Additionally, it should be noted that permission to dispose has been granted since September 2020 and the landlord is well within his right to have disposed of the stored items.
59. The tenant has not valued or listed the storage items other than what the company hired by the landlord has listed. The tenant has failed to recover the items over a long period of time and in doing so has placed the very continued existence of the items in jeopardy. I order the tenant to recover the items belonging to her in a timely fashion should they already not be disposed to the landfill. I further direct the landlord to provide the items in the normal course of the legislation as required.

Decision

60. The tenant is ordered to recover her items in a timely fashion should they not already be removed to the landfill. The landlord and tenant are ordered to address the items as required by the legislation.

Issue 4: Other - \$16,199.92

Landlord Position

61. The landlord is seeking payment for the following items:

a. Legal Fees:	\$8084.33
b. Packing & remove personal items to storage:	6178.38
c. Storage fees (9 Months):	1862.46
d. Snow Clearing:	74.75
e. Total	<u>\$16,199.92</u>

62. The landlord submitted into evidence the following to support his claim:

- a. Invoice from [REDACTED] (Exhibit L # 8)
- b. Invoice from [REDACTED] (Exhibit L # 5)
- c. Invoice from [REDACTED] (Exhibit L # 6)
- d. Invoice from [REDACTED] (Exhibit L # 7)
- e. Invoice from [REDACTED] (Exhibit L # 3, page 26)
- f. Invoice from [REDACTED] (Exhibit L # 3, page 27)
- g. Invoice from [REDACTED] (Exhibit L # 3, page 28)
- h. Invoice from [REDACTED] (Exhibit L # 9)
- i. Invoice from [REDACTED] (Exhibit L # 11)

63. The landlord testified that he himself thought that the invoice from [REDACTED] was excessive compared to a previous quote but paid the bill as was invoiced.

Tenant Position

64. The tenant disputed this portion of the claim stating that the charges are excessive.

Analysis

65. I have reviewed the testimony and evidence of the landlord and tenant in this portion of the claim.

66. I will address the claim for reimbursement of legal bills. The system of Residential Tenancies is set up for the average person such that the engaging of legal council is not a necessity. It is certainly not discouraged if either a landlord or a tenant wishes to engage counsel to represent them in a matter, however, the costs associated with this engagement would be considered punitive in nature and not be considered by the tribunal. Further, I note that the solicitor did not make representation for the landlord at the hearings and the invoices were related to the attempts prior to the hearings and claims to rectify the situation. As

such the claim for legal costs in the amount of \$8084.33 and any further invoices fails.

67. The issue of storage costs was address above in that the legislation allows for a requirement of 30 days or 1 month of storage and any longer amount of storage is the choice of the person storing the items. The tenant has been ordered to recover her belongings and address any reasonable storage fees. In this case the storage fees considered reasonable is 1 month storage at **\$206.94**.
68. The entire notion of the packing and removal of items to storage is suspect. The landlord himself even testified that he too thought that the invoice for the service was excessive from the original quote (**Exhibit L # 10**) in the amount of **\$1905.72**.
69. I accept the original estimate as a reasonable cost to pack and move items to storage and award same to the landlord.
70. The landlord testified that the tenant had vacated the property and the landlord would be entering on 07 January 2020. The tenant paid rent up to the end of November 2019 and has been denied the claim for this refund of rent. As such I find that the tenant is responsible for the property up to 30 November 2019 and, as such, would not be responsible for the cost of snow clearing in January 2020. The landlord's claim for snow clearing fails.

Decision

71. The landlord's claim for other items succeeds as follows:

a. Storage:	\$206.94
b. Packing & move to storage:	<u>1905.72</u>
c. Total:	<u>\$2112.66</u>

Issue 5: Application/Refund of Security Deposit

Landlord Position

72. The landlord testified that a security deposit in the amount of \$785.25 was paid on the property on or about 01 May 2019. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.
73. The landlord acknowledges holding the security deposit in the amount of \$785.25.

Tenant Position

74. The tenant testified that she is seeking a refund of the security deposit.

Analysis

75. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$785.25.
76. The landlord's claim has been successful as indicated above. The security deposit plus accrued interest is \$785.25 as the interest rate for 2019 – 2021 is set at 0%.
77. The security deposit is an asset of the tenant to be held against any loss incurred by the landlord attributed to the tenancy. In this matter it has been determined that there was attributable loss and as such, the landlord is entitled to offset the security deposit against the loss as outlined in the attached order.

Decision

78. As the landlord's claim above has been successful, the landlord shall offset the security deposit being held against the loss incurred as outlined in the attached order.

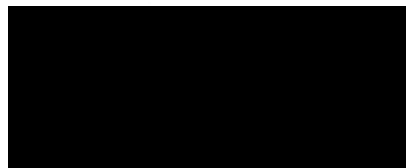
Summary of Decision

79. The landlord is entitled to the following:

a)	Packaging and Removal Fees	\$1905.72
b)	Storage Fees	<u>206.94</u>
d)	Subtotal	\$2112.66
d)	LESS: Security Deposit.....	(\$785.25)
e)	LESS: Rent Refund awarded to the tenant.....	<u>(337.50)</u>
f)	Total owing to Landlord	<u>\$989.91</u>

13 July 2021

Date



Michael Greene
Residential Tenancies Tribunal