

Residential Tenancies Tribunal

Decision 19-063-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:10 am on 15 April 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED] and [REDACTED], hereinafter referred to as “landlord1” and “landlord2”, respectively. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1” and “tenant2”, respectively, also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$3086.62,
 - An order for a payment of rent in the amount of \$5400.00,
 - An order for a payment of late fees in the amount of \$75.00, and
 - Authorization to retain the security deposit of \$1350.00.

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 section 17 of the *Residential Tenancies Act, 2000*, sections 10 and 18 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

6. Tenant2 stated that although he was served with notice of this hearing on 01 April 2019 he testified that he had not been provided with any breakdown of the damages and he was only provided with the breakdown (█ #2) on the day of the hearing. I informed the tenants that it would be prejudicial to continue with the hearing as they had not been given enough information to adequately prepare and I informed them that I was willing to postpone the hearing. The tenants requested that the hearing proceed as scheduled.

Issue 1: Compensation for Damages - \$3086.62

Relevant Submissions

The Landlord's Position

7. Landlord1 stated that she had entered into a 1-year, fixed-term lease with the tenants on 26 January 2018 and a copy of the executed agreement was submitted at the hearing (█ #1). The agreed rent was set at \$1800.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$1350.00.
8. The tenants were issued a termination notice on 30 November 2018 and a copy of that notice was submitted at the hearing (█ #1). This notice was issued under section 17 of the *Residential Tenancies Act, 2000* and it had an effective termination date of 28 February 2019. In December 2018 the tenants informed the landlord by e-mail that they would be vacating on 15 January 2019 and they moved on that date.
9. Landlord1 stated that there was significant damage caused to the property by the tenants and she submitted the following breakdown of the costs to carry out repairs:

• General cleaning	\$1625.00
• Garbage removal.....	\$200.00
• Replace broken window	\$153.33
• Painting	\$350.00
• Replace decal.....	\$236.56
• Urine treatment.....	\$150.00
 Total.....	 \$3086.62

Cleaning

10. Landlord1 submitted a copy of an invoice at the hearing (█ #3) showing that she was charged \$1625.00 + tax to have the rental unit cleaned after the tenants moved out.

11. Landlord1 stated that the hired cleaners had cleaned the bathroom and the floors and they had to wipe down the walls and the cupboards. No photographs were submitted at the hearing and neither landlord1 nor landlord2 were at the rental unit when the tenants moved out.

Garbage Removal

12. Landlord1 pointed to the invoice (█ #3) showing that she was charged \$200.00 for garbage removal. She stated that this charge was for any garbage that the tenants would have left behind but she was not able to state exactly what garbage was there when they moved out. No photographs were submitted at the hearing.

Replace Broken Window

13. Landlord1 submitted a copy of an invoice (█ #4) at the hearing showing that she was charged \$176.33 to have a window repaired. She stated that a basketball had hit the window and smashed the glass. She stated that she was under the impression that the tenants were going to have that window repaired before they vacated but that work was not carried out by them. No photographs were submitted at the hearing and the landlord did not know the age of the window.

Painting

14. Landlord1 stated that the tenants had repainted a bedroom at the rental unit without her permission and she is seeking the costs to have that room repainted. In support of her claim she submitted 2 photographs showing the walls of the rental. The landlord stated that these walls have not yet been repainted but she is seeking \$350.00 in compensation. No written quote or estimate was presented at the hearing.

Mural

15. Landlord1 also stated that there was a wallpaper mural on one of the walls at the rental unit when the tenants moved in and she submitted a photograph of that mural at the hearing (█ #7). Landlord1 stated that the tenants had painted over that mural after they moved in and she is seeking the costs to purchase a new one. She submitted a screenshot from amazon.com (█ #5) showing that a similar mural costs \$129.95 USD. According to an e-mail from the homeowner, it will cost an additional \$47.28 USD to ship that mural and the total in Canadian dollars comes to \$235.56.

Urine Treatment

16. Landlord 2 submitted an invoice (█ #11) showing that she was charged \$150.00 for a urine treatment for all the floors in the rental unit. She stated that the tenants had kept a pet rabbit at the unit and she claimed that there was a smell

of urine at the unit and it was particularly noticeable in the basement. She claimed that even after the treatment, the smell still lingered.

The Tenant's Position

Cleaning

17. Tenant1 stated that she had thoroughly cleaned the unit before she vacated and she testified that it was clean on the day she moved out.

Garbage Removal

18. Tenant1 and tenant2 both denied that any garbage had been left behind after they moved out.

Replace Broken Window

19. Tenant2 acknowledged that one of his children had accidentally broken the window with a basketball. He figured that the window was probably 50 years of age.

Painting

20. Tenant1 stated that she had received permission from one of the landlord's representatives to repaint the walls at the rental unit. Tenant2 stated that he had already started painting when he received word from the landlord that she had changed her mind.

Mural

21. Tenant2 acknowledged that they had painted over the mural and he stated that they would pay for that damage.

Urine Treatment

22. Tenant2 stated that the landlord had given them permission to keep a pet rabbit at the rental unit. He claimed that he was not aware of any smell of urine in the apartment and testified that the rabbit was kept in a cage.

Analysis

23. 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;

24. Regarding the cleaning, the garbage removal and urine treatment, I find that the landlord has not presented enough evidence to warrant any award. No photographs were presented at the hearing showing the condition of the unit after the tenants moved out and no outgoing condition report was entered as evidence to establish that there were any deficiencies at the unit when it was turned over to the landlord. Furthermore, landlord1 and landlord2 were not at the unit when the tenancy ended and could give no first-testimony concerning the condition of the property on 15 January 2019. The tenants both testified that the rental unit was clean when they moved and that there was no garbage left behind. I found that testimony to be credible. As such the landlord's claim does not succeed.
25. Regarding the painting, it was the tenant1's testimony that she had been given permission to paint and tenant2 stated that he had already commenced the

painting when the landlord informed him that she had changed her mind. I also found this testimony to be credible. In any case, no quotes or estimates were submitted at the hearing and I therefore find that the landlord had failed to establish that it would cost \$350.00 to have that room repainted.

26. Tenant2 acknowledged that he had damaged the window and he stated that he would pay to have the mural replaced. I therefore find that the landlords are entitled to \$389.89 in compensation for those 2 items (\$153.33 + \$236.56)

Decision

27. The landlords' claim for compensation for damages succeeds in the amount of \$389.89.

Issue 2: Rent – \$5400.00

Relevant Submissions

The Landlord's Position

28. With her application landlord1 submitted rent records showing the payments she had received from the tenants since the tenancy began. She pointed out that she had received no rent for December 2018 and January 2019 and she is seeking a payment of \$3600.00 for those 2 months (\$1800.00 per month x 2 months).
29. Landlord1 also pointed out that although the tenants had vacated on 15 January 2019 she had not received a proper notice from them that they were terminating their agreement on that date. Landlord2 had issued the tenants a notice on 30 November 2018 terminating their agreement effective 28 February 2019 and she testified that she could not recall receiving any notice from the tenants indicating that the agreement was terminating earlier than that date.
30. Landlord1 testified that she started advertising the unit immediately after the tenants vacated but she was unable to secure new tenants until 01 May 2019. As the tenancy was not set to end until 28 February 2019 and as no notice was given that it was terminating earlier than that date, the landlord is also seeking rent for February 2019 for a total claim of \$5400.

The Tenant's Position

31. Tenant2 acknowledged that they had not paid rent for December 2018 and January 2019. He stated that he was experiencing some financial hardship during this period as a result of being evicted during Christmas and he needed to use the rent money to pay for his new apartment.

32. Tenant1 testified that she had sent an e-mail to landlord2 sometime around 15 December 2018 informing her that they were moving out of the unit on 15 January 2019. She argued that as she had terminated her agreement on 15 January 2019 and as they were not residing at the unit during February 2019, they therefore do not owe any rent for that month.

Analysis

33. Section 18 of the *Residential Tenancies Act, 2018* outlines the notice requirements that tenants must be abide by when they are terminating a rental agreement and the 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*

...

(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.

34. As the landlord and tenant had entered into fixed-term lease which was set to expire on 31 January 2019, if the tenants wished to terminate their rental agreement with the landlord the earliest day that could have indicated in such a notice would have been 31 January 2019. Furthermore, if the tenants did wish to terminate their agreement on that date, they would have had to issue the landlord a termination notice 2 months prior to that date, i.e., sometime prior to 01 December 2018.
35. The tenants stated that they had issued the landlord a termination notice sometime in mid-December 2018 indicating that they were vacating on 15 January 2019. That notice does not meet the timeframe requirements set out in

this section of the *Act* and it is therefore invalid. In mid-December 2018, the earliest the tenants could have indicated that their agreement was ending would have been 28 February 2019, the same termination date set out in the notice the landlord had issued to the tenants on 30 November 2018.

36. As the tenants had not terminated their lease in accordance with the *Act* and as their rent was overdue, then according to s. 31.(2) of this *Act*, they are considered to have abandoned the rented premises when they moved out on 15 January 2019.
37. I accept the landlord's claim that she started to advertise the unit after the tenants vacated but despite those attempts, the unit sat vacant during February 2019.
38. Accordingly, I find that the landlord is entitled to a payment of rent for December 2018, January 2019 and February 2019.

Decision

39. The landlord's claim for a payment of rent succeeds in the amount of \$5400.00.

Issue 3: Late fees - \$75.00

40. The landlord has assessed late fees in the amount of \$75.00.

Analysis

41. Section 15.(1) 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.

42. The minister has set the following fees:

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.

Decision

43. As the tenants have been in arrears since 02 December 2018, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 4: Security Deposit

44. The tenants paid a security deposit of \$1350.00 on 31 January 2018 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and order.

Issue 5: Hearing Expenses

45. Landlord1 submitted a hearing expense claim form and a receipt for \$20.00 for the costs of filing this application as well as an invoice showing that the landlord was charged \$80.00 to hire a process server to serve the tenants with notice of this hearing.
46. As the landlord's claim has been successful, the tenant shall pay these expenses.

Summary of Decision

47. The landlord is entitled to the following:

a) Compensation for damages	\$389.89
b) Rent.....	\$5400.00
c) Late fees.....	\$75.00
d) Hearing expenses.....	\$100.00
e) LESS: Security deposit.....	(\$1300.00)
Total Owing to Landlord	<u>\$4614.89</u>

28 June 2019

Date


John R. Cook
Residential Tenancies Tribunal