

Residential Tenancies Tribunal

Decision 19-219-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:30 am on 11 April 2019 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 compensation for damages in the amount of \$7052.12,
 - An order for a payment of rent in the amount of \$3067.00,
 - An order for a payment of late fees,
 - An order for a payment of “other expenses” in the amount of \$350.00, and
 - Authorization to retain the security deposit.
4. The tenant is seeking the following:
 - A determination of the validity of a termination notice issued to her on 17 April 2018,
 - An order for compensation for inconvenience in the amount of \$400.00, and
 - An order for refund of the security deposit in the amount of \$1500.00.

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 decision are sections 10 and 47 of the *Residential Tenancies Act, 2018*, sections 8, 18, 21 and 23 of the *Residential Tenancies Act, 2000* and policy 9-3: Claims for Damage to Rental Premises

Preliminary Matters

7. The landlord was only served with the tenant's counterclaim on 05 April 2019 and I informed her that this did not meet the 10-day notice requirement set by this Section. The landlord waived her right to proper notice and requested that the hearing proceed as scheduled.
8. The landlord called the following witnesses:
 - [REDACTED] – landlord's property manager
 - [REDACTED] – friend of landlord
9. The tenant called the following witness:
 - [REDACTED] – tenant's daughter

Background

Relevant Submissions

The Landlord's Position

10. The landlord and tenant entered into 1-year, fixed-term rental agreement on 01 August 2017 and a copy of the executed lease was submitted at the hearing ([REDACTED] #1). The agreed rent was set at \$2000.00 and the tenant paid a security deposit of \$1500.00.
11. On 17 April 2018 the landlord issued the tenant a termination notice by posting it to the door of the rental unit and a copy of that notice was submitted at the hearing. This notice was issued under section 18 of the *Residential Tenancies Act, 2000* (notice where failure to pay rent) and it had an effective termination date of 27 April 2018.
12. On that notice the landlord had written that she was also issuing the notice under section 23 of this *Act* (notice when tenant fails to comply with peaceful enjoyment) as there was dog feces discovered on the premises and as the tenant had been smoking in the rental unit.
13. The landlord testified that the tenant had all of her possessions removed from the property on 03 May 2018. The landlord stated that when she regained possession of the rental unit she discovered that the tenant had caused

significant damage to the rental unit and numerous items that the unit had been furnished with were either destroyed or missing.

14. With her application, the landlord submitted a breakdown of the costs she is seeking here, broken into 3 sections: Restoration: \$3120.20, Furniture – Destroyed or Missing: \$2861.92 and Damages Fixed: \$1070.00.

The Tenant's Position

15. The tenant stated that she had a good relationship with the landlord right up until April 2018. During that month she informed the landlord that she would be out of the country, in [REDACTED], for business and her 18 year-old daughter would be left behind to care for the rental unit. She informed the landlord that her trip would run from 12 April to 27 April 2018.
16. The tenant stated that the landlord panicked on hearing this news and became irrationally fearful that her daughter would have a party at the unit while she was out of the country. As such, the tenant claimed that the landlord started to seek ways to get the tenant out of the rental unit and that was why she had issued her the termination notice.
17. The submitted termination notice was issued to her on 17 April 2018 while she was in [REDACTED] and she was required to vacate on the day she returned. She testified that it was very stressful having to try to move under these circumstances but she was nevertheless vacated by 28 April 2018.

Issue 1: Missing and Damaged Possessions - \$2861.92

Relevant Submissions

The Landlord's Position

18. With respect to the missing furnishings, the landlord submitted the following list and their replacement costs:
 - 60" mattress pad..... \$149.00
 - 54" mattress pad..... \$139.00
 - Sleeprite queen pillows..... \$???.??
 - Guisnart blenda \$149.99
 - Dyson animol vacuum \$229.99
 - Heat dish \$78.99
 - Bedding n bath \$229.95
 - 8 pillows (bed) \$???.??
 - White static elephant \$???.??
 - Stereo/radio..... \$???.??

19. The landlord stated that the rental unit was furnished with all of the above listed items and they were all missing after the tenant moved out. These items are not recorded on the rental agreement and no photographs were submitted showing these items in the rental unit.
20. Regarding the 2 mattress pads, the landlord submitted an invoice showing that she had purchased these items in 2013 (█ #4) at a cost of \$149.00 and \$139.00, respectively. The landlord stated that she is not seeking the replacement costs of the pillows. She also submitted a receipt (█ #5) showing that she purchased a Cuisinart blender in 2013 at a cost of \$149.99. Regarding the vacuum, the landlord had no receipt for that item and no quotes or estimates were submitted at the hearing.
21. The landlord also complained that the tenant had cleaned out the bathroom and had taken all the towels, the bathmat as well as the shower curtain and hooks. Regarding the costs she is seeking for these items, the landlord submitted a copy of a receipt from Winners (█ #6) showing that she had paid \$174.99 + tax for bedding and \$24.99 for "Bath & Basics". She testified that although the receipts states that she had purchased "bedding" she had actually purchased mats and towels.
22. She also stated that the tenant had admitted to her, in text-messages, that she had removed her white static elephant, the heat dish and the stereo. As evidence, she submitted a copy of a text-message (█ #7) in which the tenant writes: "The radio was brought here in a box, ill return that." The landlord is not seeking compensation for that radio, but if the tenant is in possession of that radio she stated that she would like it returned to her.
23. The landlord also complained that the tenant's cat had scratched up a leather chair, a loveseat, a sofa and 2 bar stools and she submitted photographs at the hearing showing this damage (█ ##8-11). The landlord stated that these pieces of furniture were purchased in 2013 and were in perfect condition when the tenant moved in. According to her breakdown, the landlord paid the following for those pieces of furniture
 - Leather chair \$599.00
 - Loveseat..... \$689.00
 - Sofa \$399.00
 - 2 bar stools \$198.00
24. The landlord stated that after the tenant moved out of the unit she took everything out of the house as "she could not handle it anymore". With respect to these pieces of furniture, she testified that she had sold those items for \$350.00 and she submitted a photograph of an e-mail receipt for that purchase (█ #13).
25. The landlord is seeking the replacement costs of these items, less the \$350.00 she recouped through their sale.

The Tenant's Position

26. The tenant acknowledged that she had accidentally taken the elephant and the heat dish and she claimed that she was in such a rush to move out when she returned from [REDACTED] that one of her movers had accidentally packed those items. Regarding the radio, the tenant stated that she had no recollection of removing that item from the rental unit and she seemed puzzled by the copy of the text-message exchange the landlord had submitted at the hearing.
27. Regarding the remaining items, the tenant denied that she had removed them when she vacated. She reiterated her point that the move was very stressful, given that she only had a day to complete it, and she testified that she did not have the desire, space or time to take the items that the landlord has listed here.
28. She denied that she had removed the mattress pads and claimed that she had used her own bedding during her tenancy. She also denied that she had removed the towels or pillows and also claimed that she had used her own while she lived at the rental unit. She also stated that she had used her own blender during her tenancy and stated that she was not supplied with a blender when she moved into the unit, though she did concede that there was part of a blender in the kitchen when she moved in.
29. The tenant also testified that she was at the rental unit on 30 April 2019 when the landlord had sent in her hired cleaners and she claimed that she saw the cleaners remove the shower curtain and dispose of it.
30. Regarding the vacuum, the tenant acknowledged that the landlord had supplied her with a vacuum shortly after she moved in, but she claimed that it did not work and she was required to purchase her own. She stated that she left the landlord's broken vacuum in the basement.
31. With respect to the furniture, the tenant acknowledged that her cat had gotten into the living room on 1 or 2 occasions and had scratched the chair and sofa, but she claimed that the damage was very minor and is easily fixed.
32. The tenant stated that she had intended to repair these pieces of furniture when the tenancy ended but again pointed out that she was not given enough time as she was in [REDACTED] when the landlord had given her the termination notice and she was required to move on the same day she returned home.
33. She also argued that the landlord acted rashly by emptying the house after she vacated and she stated that these pieces of furniture were perfectly fine and did not have to be sold.
34. The tenant also denied that her cats had scratched the bar stools and she testified that the damage shown in the landlord's photograph was already there when she moved in.

Analysis

35. 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;

36. With respect to the majority of the missing items, the only evidence the landlord presented at the hearing to establish that these items were missing was her own testimony. But that testimony was challenged by the tenant and I therefore have

to conclude that the landlord had failed to establish, on the balance of probabilities, that they were removed by the tenant.

- 37. The tenant admitted at the hearing that she had accidentally taken the static white elephant and the heat lamp when she vacated the unit. She stated that she is currently in possession of the elephant and is willing to give it back to the landlord. Accordingly, I hereby order that she deliver up that item to the landlord.
- 38. Regarding the heat lamp, the tenant stated that although she knows that she had taken it from the rental unit, now that it has been a year since she moved out, she doesn't know if she will be able to locate it. I will give the tenant 1 month to locate that item and if she does not return it to the landlord I find that she would have to compensate her for its loss. I find \$50.00 to be fair.
- 39. With respect to the damaged furniture, the tenant again admitted that her cat had scratched the sofa, loveseat and couch. I agree with her, though, that the damage seemed minor and these pieces of furniture would still be useable and it seems probable that they could be repaired. As such, I am not of the view that the landlord is entitled to the replacement costs she is seeking here. I find that an award of \$200.00 is a fair award for the depreciation in value caused by the scratches.

Decision

- 40. The tenant shall deliver up to the landlord the static white elephant.
- 41. The tenant shall deliver up to the landlord the heat dish by 20 July 2019. If she fails to deliver up that heat dish by 20 July 2019, the tenant shall pay the landlord \$50.00.
- 42. The tenant shall pay to the landlord \$200.00 in compensation for damages caused to her furniture.

Item 2: Damages Fixed - \$1070.00

Relevant Submissions

The Landlord's Position

- 43. The landlord stated that besides the damaged furniture, which she sold, she also discovered additional damages at the rental unit for which she had incurred costs to repair. She submitted the following breakdown:
 - Repair broken bed legs \$75.00
 - Repair and paint kitchen drawer \$50.00
 - Remove ruined furniture \$270.00
 - 2 trips to dump..... \$125.00

- Remove dog feces..... \$50.00
- Removal/clean up cigarette butts \$60.00
- 2 days of cleaning..... \$360.00
- Rekey locks \$80.00

- Total \$1070.00

Bed Legs

44. The landlord stated that she had received a call from the tenant during the tenancy informing her that the legs on the bed were damaged after she and her children had been hopping up and down on that bed. She stated that she had a worker go to the unit to repair these legs and she submitted a copy of a receipt showing that she was charged \$75.00 to have the legs repaired. The landlord stated that the bed was purchased in 2013. No photographs were submitted at the hearing showing this damage.

Kitchen Drawer

45. The landlord submitted a photograph (█ #21) showing that a kitchen drawer was damaged and she stated that this damage was caused by the tenant during her tenancy. She also submitted a receipt showing that she had paid \$50.00 to have that drawer repaired.

Remove Ruined Furniture

46. The landlord stated that because the tenant had allowed her cat to scratch up her furniture, she was required to remove it from the rental unit and store it at her house until she was able to sell it. She stated that it takes about 8 minutes to drive from her home and the rental unit. The landlord submitted a receipt showing that she was charged \$270.00 to have that furniture moved (█ #23).

2 Trips to Dump

47. The landlord stated that she went to the rental unit on 19 April 2018 and noted that the tenant's back deck was overflowing with garbage and cardboard boxes. She also noted that one of her pots had been thrown out with this garbage. The landlord submitted 3 photographs at the hearing showing that garbage (█ ##24-26). The landlord claimed that all of this garbage was blocking the backdoor causing a fire hazard and she decided that it had to be removed immediately. She submitted a copy of a receipt at the hearing (█ #27) showing that she was charged \$125.00 for 2 trips to the dump to have that garbage removed.

Remove Dog Feces

48. The landlord stated that the tenant's dog would defecate around the property and she claimed that she was getting complaints from the tenant's neighbours and the downstairs' tenants about that matter. She submitted photographs at the

hearing (█ ##29-31) showing dog feces on the walkway on the side of the house and she also submitted a copy of a receipt for \$60.00 for the costs of hiring her handyman to go to the unit on 18 April, 22 April and 24 April 2018 to clean up the dog feces.

Remove Cigarette Butts

49. The landlord stated that the tenant's daughter's boyfriend was a smoker and he would throw cigarette butts out a window of the rental unit onto the grounds. She stated that she had hired someone to go to the unit in April 2018 to clean up these butts and she submitted a copy of a receipt showing that she was charged \$60.00 for that work.

Cleaning

50. The landlord stated that the whole apartment had to be cleaned after the tenant vacated. She testified that the oven, the refrigerator and all the cupboards were dirty and all the floors, walls and windows had to be washed and the bathroom had to be cleaned. The landlord called █ as a witness and she corroborated the landlord's claim that the unit was dirty after the tenant moved out. In support of her claim, the landlord submitted 6 photographs at the hearing (█ ##34-39) showing that there was some debris on the floors, some matches on a window sill as well as several bags of garbage. The landlord submitted a receipt showing that she was charged \$360.00 to have that work completed (█ #40).

Rekey Locks

51. The landlord stated that she did not ask for the keys back after the tenant vacated and she had the locks changed by a locksmith. She submitted a copy of a receipt (█ #41) showing that she was charged \$92.87.

The Tenant's Position

Bed Legs

52. The tenant testified that she had not been hopping on the bed, but rather that she was sitting on the edge of the bed and her daughter sat down next to her and that was when one of the legs let go. She argued that this damage was caused by the normal use of the bed. She stated that this one leg had been squeaking for some time and she expected that it would eventually let go as it was made of cheap pressboard.

Kitchen Drawer

53. The tenant stated that the drawer was damaged when she first moved in and it was pointed out to her by the landlord when she initially viewed the apartment. She stated that she informed the landlord that the drawer fell apart again just

several days after she moved in but the landlord took no corrective action. The tenant also complained that the landlord's photographs are not date stamped.

Remove Ruined Furniture

54. The tenant argued that the furniture was not ruined and she argued that she cannot be held responsible for what the landlord decided to do with that furniture after she vacated.

2 Trips to Dump

55. The tenant stated that before she departed for [REDACTED] she had placed her recycling and some cardboard boxes on the back deck for her daughter to place in front of the house on the weekly recyclable collection. She claimed that these items were not blocking the back door and were not a fire hazard. She also claimed that it would not have taken 2 trips to the dump to remove the items that had been left on the deck. Furthermore, the tenant argued that the landlord had no right to be on her deck taking photographs without her permission or without any prior notice.

Remove Dog Feces

56. The tenant acknowledged that her dog did sometimes defecate on the grounds at the rental unit. She stated that she had an agreement with the next door neighbours that if her dog ever did defecate on their property, they could send her a text-message with a "poop emoji" and she would promptly take clean it up. She testified that she was only contacted once by them and she questioned the landlord's contention that they had been complaining to her. She also stated that she had not received any notice from the landlord about dog feces and the only time this issue was raised was when she informed the landlord that she was heading to [REDACTED]

Remove Cigarette Butts

57. The tenant acknowledged that the landlord had complained to her about the cigarette butts on the day that she had informed her of her trip to [REDACTED]. She stated that she berated her daughter for throwing butts on the property and her daughter promptly cleaned them up. She claimed that there was no need to hire someone to clean up any cigarette butts and she argued that the amount that the landlord is seeking here is "ludicrous".

Cleaning

58. The tenant stated that she had not been given enough time to clean the rental unit. She stated that she was in [REDACTED] when the landlord had issued her the termination notice and only had a couple of days to get her things out of the apartment. She also claimed that she had intended to clean the unit but the landlord had her cleaners at the unit while she was in the middle of moving. The

tenant also suggested that the photographs only show what one would expect at a unit when someone is moving and she stated that the photographs only show regular wear and tear.

Rekey Locks

59. The tenant testified that she had left the keys to the rental unit in the mailbox and they were supposed to be retrieved by her neighbour. The tenant question why it is the landlord thinks she is responsible for the costs of changing these locks.

Analysis

60. Regarding the bed legs and the kitchen drawer, I find that the landlord had failed to produce enough evidence at the hearing to establish, on the balance of probabilities, that these items were damaged by a deliberate or negligent act on the part of the tenant. It was the tenant's testimony that the drawer was already broken when the tenancy began and she claimed that the bed leg broke as a result of normal use. I found that testimony to be credible and therefore the landlord's claim for those items does not succeed.
61. Regarding the removal of the furniture, I also agree with the tenant that the damage to these items was only minor and did not necessitate her selling them. That claim also fails.
62. With respect to the garbage on the deck, the dog feces and the cigarette butts, I was also not persuaded that the landlord is entitled to compensation. In cases where a tenancy is on-going and where the tenant has caused damage to the rental unit or has failed to keep the premises clean, as required by statutory condition 2, quoted in paragraph 33, above, the landlord is first required to give the tenant notice that she is in breach of that statutory condition and allow her time to remedy the situation. No such notice was given to the tenant and the landlord also gave no notice that she would be entering upon the grounds of the rental unit, as required by the *Act*. Had such notices been given or had the landlord waited until the tenancy ended and the tenant moved out, the tenant may have rectified these issues herself. Therefore, those claims do not succeed.
63. I do accept the landlord's claim that some cleaning was required at the unit and the photographs submitted by the landlord show that the floors were dirty and there was some debris and garbage left behind. However, those 6 photographs do not give enough of a picture of the rental unit after the tenant moved out to justify an award of \$360.00. The landlord claimed that all the walls and windows were dirty, that the bathroom required cleaning, that the oven and stove were dirty and that the cupboards needed to be cleaned out, but no photographs were submitted showing their condition. Accordingly, I find that, given the lack of evidence, the landlord is not entitled to the full amount she is seeking here. Based on the evidence, I find that \$120.00 is fair.

64. Regarding the changing of the locks, policy with this Section is that a landlord cannot charge the tenant for the replacement of locks unless they were damaged by the tenant or the tenant's visitors. Replacing locks is considered a cost of doing business for a landlord. When a rental agreement is terminated and another tenant is taking occupancy of the unit, the landlord is expected to change locks for the security of the new tenant.

Decision

65. The landlord's claim for cleaning succeeds in the amount of \$120.00.

Issue 3: Restoration - \$3120.20

Relevant Submissions

The Landlord's Position

66. This portion of the landlord's application concerns 2 items:

- Replace broken glass in kitchen cupboard \$15.20
- Painting \$3105.00

- Total \$3120.20

Broken Glass

67. The landlord stated that the tenant had informed her that her daughter had slammed one of the kitchen cupboards resulting in the glass being broken. The landlord submitted a copy of a receipt (█ #42) which shows that she had paid \$15.20 to have new glass installed in that cupboard.

Painting

68. The landlord stated that the rental unit was freshly painted before the tenant moved into the unit and she testified that she was required to hire a painter to repaint the whole unit again after the tenant moved out. She stated that all the walls in the rental unit were marked up and scuffed and there was dirt on all the walls that could not be cleaned.

69. The landlord's property manager, █, carried out the painting and he was called as a witness. █ corroborated the landlord's claim that the rental unit had to be re-painted and he stated that there was a fair bit of damage to the walls throughout the unit. He testified that there were various nail holes and pin holes on the walls, some of the walls and trims were marked up and many of the baseboards were dirty and had to be repainted.

70. [REDACTED] submitted into evidence a USB thumbdrive containing photographs of the walls after the tenant moved out. During questioning, [REDACTED] commented on each of these photographs and identified that damaged areas on the walls and trim.
71. The landlord submitted an invoice at the hearing ([REDACTED] #49) showing that she was charged \$3105.00 to have the unit painted and cleaned.

The Tenant's Position

Broken Glass

72. The tenant stated that this cupboard did not have a felt pad on the back of it like the others and she claimed that this contributed to the glass breaking. She denied that her daughter had slammed the cupboard and testified that she had used it in a normal way. She stated that she had informed the landlord about this issue back in September or October 2017 when she first moved in but nothing was done.

Painting

73. Regarding the painting, the tenant denied the landlord's claim that the whole unit was freshly painted when she moved in. She stated that the landlord had only painted 1 bedroom and some of the trim work.
74. The tenant also challenged the landlord's claim that the whole unit needed to be repainted after she had moved out and she denied that she had caused any damage to the walls in the apartment.
75. With respect to the photographs submitted by [REDACTED], the tenant stated that she was unable to see any damage in many of the areas [REDACTED] identified and she claimed that some of the damage was pre-existing. In the one photograph, f17.jpg, which shows a large gouge in a wall, the tenant denied that this damage had occurred during her tenancy and she claimed that there did not exist any such damage on the walls while she resided at the unit.

Analysis

76. With respect to the broken glass, I find that not enough evidence was presented at the hearing to establish, on the balance of probabilities, that this damage was caused by a deliberate or negligent act on the part of the tenant. It was the tenant's testimony that the glass broke during the normal use of the cupboard door.
77. With respect to the painting, I agree with the tenant that the evidence submitted by [REDACTED] goes no way towards establishing that the rental unit needed to be painted.

78. Most of the submitted photographs show no damage whatsoever even after I zoom in on the area where [REDACTED] insisted there was damage (f2.jpg, f3.jpg, f5.jpg, f29.jpg, f30.jpg, f31.jpg, f32.jpg).
79. On some of the other photographs, although there initially does not appear to be damage, some imperfections and holes can be detected when I zoom in on the photograph (e.g., f18.jpg, f19.jpg, f20.jpg and f21.jpg). However this damage is so minor that I have to chalk it up to normal wear and tear and I find that the tenant cannot be held liable for the costs the landlord had incurred to repaint the whole unit.
80. With respect to the photograph (f17.jpg) which shows what is ostensibly the severest bit of damage caused to the walls, [REDACTED] stated that this photograph was taken after he had “dug out” a section of the wall in order to prepare it for plastering and painting and he identified this area of the wall as that which can be seen in photograph f6.jpg. But even here, what I see in this latter photograph would have to be attributed to normal wear and tear and it merely seems to be a chip in the paint as a result of the bed rubbing up against the wall. Landlords have to expect that, as a result of normal use, the walls in a rental unit will suffer some minor damage. Tenants cannot be held liable for that damage unless that damage was significant and was caused by a deliberate or negligent act.

Decision

81. The landlord’s claim for the costs of restoration do not succeed.

Issue 4: Validity of Termination Notice

82. The tenant questions the validity of the termination notice she was issued on 17 April 2018.
83. That notice was issued under section 18 of the *Residential Tenancies Act, 2000* and it had an effective termination date of 27 April 2018. On the bottom of the notice the landlord had also written that she was issuing the notice under section 23 of this *Act* (notice when tenant fails to comply with peaceful enjoyment) as the tenant had failed to clean up the dog feces which was found on the property and because she was smoking in the rental unit.
84. The tenant stated that the landlord’s motivation for issuing this notice was that she had informed her that she was taking a trip to [REDACTED] and she was leaving her 18 year-old daughter in charge of the unit while she was away. She claimed that the landlord was irrationally fearful that her daughter would have a party and was looking for any excuse to terminate the tenancy.
85. Regarding the rent, the tenant stated that she had an agreement with the landlord that she could pay the rent in 2 installments of \$1000.00 each month, on

the 1st and 15th day. She acknowledged that she hadn't paid the second installment for April 2018, but she claimed that she had withheld it because she knew the landlord was already holding a \$1500.00 deposit which she did not think would be returned to her.

Analysis

86. The termination notice issued to the tenant on 17 April 2018 is not a valid notice, for numerous reasons.
87. First of all, section 18 of the *Residential Tenancies Act, 2000* states:

Notice where failure to pay rent

18. (1) Notwithstanding subsection 17(1),

(a) where

(i) residential premises are rented from month to month,

(ii) a rental agreement is for a fixed term, or

(iii) residential premises are a site for a mobile home, and

the rent payable by a tenant is in arrears for 15 days, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant; and

88. This section of the *Act* states that a landlord may issue a tenant a 10-day termination notice when the tenant's rent is in arrears for 15 days. It was acknowledged by the landlord at the hearing that she had an agreement with the tenant that rent was due on the 1st and 15th of each month. The tenant paid her first installment of rent for April 2018 on 04 April 2018 but she did not pay that second instalment on the 15th as agreed. On 17 April 2018, the day the notice was issued, the tenant had only been in arrears for 2 days. As the tenant needed to be in arrears for 15 days before such a notice could be issued, it is invalid.
89. It is also invalid as the termination date is incorrect. Section 18 of this *Act* states that where a tenant's rent is in arrears for 15 days the landlord may issue a notice requiring the tenant to vacate 10 days after the notice is issued. But these have to be 10 clear days. In counting these 10 days, one does not count the day the notice is issued or the day the tenant is required to vacate. On 17 April 2018, had the tenant been in arrears for 15 days, the earliest the landlord could have required the tenant to vacate would have been 28 April 2018, not 27 April.

90. Finally, the landlord indicates on this notice that it was issued as the tenant had contravened the peaceful enjoyment provisions of the *Act*. I was not persuaded by that claim. No evidence was presented at the hearing to establish that the dog feces found on the property or the smoking was disturbing any other tenants at the rented premises and as the landlord did not reside there either, it was not disturbing her peaceful enjoyment.
91. Rather, these issues are better regarded as failures of the tenant to comply with her obligations as set out in statutory condition 2 of the *Residential Tenancies Act, 2000*, which states:

Statutory conditions

8. (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.

...

2. Obligation of the Tenant - The tenant shall keep the 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 premises.

92. But in cases where a tenant violates these obligations, the landlord is first required to give the tenant notice that she is in breach of that obligation and give her an opportunity to come into compliance. If the tenant fails to heed the landlord's notice, she could have, in April 2018, given the tenant a termination notice under section 21 of the *Residential Tenancies Act, 2000* (notice where tenant's obligations not met). The landlord did not give the tenant any notice to remedy these breaches and instead hired someone to go onto the tenant's property, without notice, to remove the cigarette butts and the feces.

Decision

93. The termination notice issued to the tenant on 17 April 2018 is not a valid notice.

Issue 5: Rent - \$3067.00

Relevant Submissions

The Landlord's Position

94. The landlord stated that the last rental payment she received from the tenant was paid on 04 April 2018 in the amount of \$1000.00 and she testified that she did not receive the second installment of \$1000.00 that was owing for that month.

95. The landlord stated that she immediately started to advertise the unit for rent after she terminated the rental agreement but she was unable to secure new tenants until June 2018.
96. The landlord is seeking an order for a payment of the remaining \$1000.00 for April 2018 as well as \$2000.00 in compensation for the lost rental income she suffered during the month of May 2019.
97. She is additionally seeking \$67.00 in late fees.

The Tenant's Position

98. The tenant acknowledged that she had not paid the remaining rent for April 2018.
99. With respect to the claim for rent for May 2018, the tenant stated that she was not residing that the unit during that period as the landlord had improperly evicted her and she argued that she is therefore not liable for rent for that month.

Analysis

100. It is not disputed that the tenant did not pay the rent that was owing for the second half of April 2018 and I find that the landlord is therefore entitled to a payment of the remaining \$1000.00 owing for that month.
101. I also agree with the landlord that since the tenant has been in arrears now for over a year, she is entitled to assess late fees. The maximum amount a landlord may charge for late fees is \$75.00 and I therefore find that the landlord is entitled to an award for that amount.
102. Regarding the \$2000.00 the landlord is claiming for May 2018, I find that she is not entitled to an award as she had not properly terminated the rental agreement. As I determined in the previous section, the tenant was not in breach of either section 18 or section 23 of the *Residential Tenancies Act, 2000* when the notice was issued on 17 April 2018. As the landlord did not have cause to terminate the rental agreement on 17 April 2018, the tenant cannot be held responsible for the loss of rental income she suffered because the tenancy ended early.

Decision

103. The landlord's claim for rent and late fees succeeds on the amount of \$1075.00.

Issue 6: Compensation for Inconvenience - \$400.00

104. The tenant stated that when she returned to the country on 27 April 2018 she only had 1 day to get all of her belongings out of the apartment. She testified that she found the experience of moving on such short notice to be very stressful

and she claimed that this experience eventually led to her having a breakdown and she had to be hospitalized.

105. She also complained that during her time out of the country, the landlord had gone onto her property, without notice, and had removed her recyclables from her back deck. She also complained that the landlord had disconnected the internet on 25 April 2018 without notice.
106. The tenant's daughter, [REDACTED], was called as a witness and she corroborated the tenant's claim that the landlord had put her and her mother under undue stress during the month of April 2018. [REDACTED] stated that as her mother was out of the country when the termination notice was issued, she had to pack and clean the apartment by herself. She stated that she was a student at that time and she was in the middle of writing exams and she found the experience to be stressful
107. The tenant stated that on the day she moved she had to pay \$300.00 to hire a truck and trailer and she stated that she had spent \$100.00 for gasoline. The tenant is seeking to recoup those costs in compensation for the inconvenience the landlord had caused her. No receipts were submitted at the hearing.

Analysis

108. Although I agree with the tenant that she was inconvenienced as a result of having to vacate the unit on such short notice, I am not persuaded that she is entitled to any compensation.
109. First of all, the tenant produced no evidence at the hearing to establish that she was charged \$300.00 for moving equipment or that she had paid \$100.00 in gas during the move.
110. Secondly, although I agree with the tenant that the termination notice was defective and of no force, the tenant decided to move on that notice anyhow and it was partly that decision, her decision, which contributed to the costs she is seeking here. If she had made a different decision—say, to continue residing at the unit—she would not have incurred these costs.

Decision

111. The tenant's claim for compensation for inconvenience does not succeed

Issue 7: Security Deposit - \$1500.00

112. The tenant paid a security deposit of \$1500.00 on 23 July 2017 and receipt of that deposit is acknowledge in the submitted lease ([REDACTED] #1).
113. That deposit is to be disposed of according to the summary, below.

Issue 8: Hearing Expenses

114. As both claims have been partly successful, the parties shall pay their own hearing expenses.

Summary of Decision

115. The termination notice issued to the tenant on 17 April 2018 is not a valid notice.

116. The tenant shall deliver up to the landlord her static white elephant.

117. The tenant is ordered to deliver up to the landlord her heat dish by 20 July 2019. If she fails to deliver up that heat dish by 20 July 2019, the tenant shall pay the landlord \$50.00.

118. The tenant is entitled to a payment of \$125.00 determined as follows

- a) Refund of security deposit..... \$1500.00
- b) LESS: Damaged furniture (\$200.00)
- c) LESS: Cleaning..... (\$100.00)
- d) LESS: Rent and late fees (\$1075.00)

- Total Owing to Tenant..... \$125.00

25 June 2019

Date

John R. Cook
Residential Tenancies Tribunal