

Residential Tenancies Tribunal

Decision 19-0323-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:15 pm on 03 July 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 tenants, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1” and “tenant2”, respectively, also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - A determination of the validity of a termination notice issued to her on 28 February 2019;
 - An order for compensation for damages in the amount of \$1450.00;
 - An order for compensation for lost rental income in the amount of \$2400.00; and
 - Authorization to retain the security deposit of \$600.00.

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 are sections 10, 18 and 34 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

6. The landlord amended her application at the hearing and stated that she was now seeking \$1607.00 in compensation for damages. With the consent of the tenants, the landlord also amended her application by adding a claim for a payment of utilities in the amount of \$227.36.

Issue 1: Validity of Termination Notice

Issue 2: Loss of Rental Income - \$2400.00

Relevant Submissions

The Landlord's Position

7. The landlord and tenants entered into a 1-year, fixed-term lease commencing 01 August 2018 and a copy of the executed rental agreement was submitted with the landlord's application (█ #1). The agreed rent was set \$1200.00 and it is acknowledged in the lease that the tenants had paid a security deposit of \$600.00.
8. Tenant2's father became terminally ill in 2019 and on 28 February 2019 tenant1 sent an e-mail to the landlord (█ #1, █ #2) informing her that they were terminating their rental agreement in order to move back to █ to be with him. In that e-mail, tenant1 states that they will vacate by 01 April 2018 and they moved on 29 March 2019.
9. The landlord stated that she started advertising the unit for rent as soon as she received the notice from the tenants, on 28 February 2019, but she claimed that she was unable to secure new tenants until 01 June 2019. In support of her claim she submitted the order details from Kijiji (█ #12) showing that she had placed an advertisement on 01 April 2019 and again on 02 May and 03 May 2019 (█ #3). She also submitted screen shots from her smart phone showing that she had received various responses to the advertisements (█ #4).
10. The landlord stated that she was unable to get new tenants until 01 June 2019 and she is seeking an order for a payment of the loss of rental income she suffered during April and May 2019.

The Tenant's Position

11. Tenant2 contended that they only had to give a 1-month notice to the landlord as they were moving back to █ to be with an ailing relative. She acknowledged that she had not filled out the correct form when she had sent the e-mail to the landlord on 28 February 2019, but she stated that she knew she had to only give a 1-month notice and the e-mail met that condition.

12. Tenant2 also claimed that she had found a prospective tenant to move into the unit and she had sent a text-message to the landlord in late March 2019 telling her that she could send along her contact information if the landlord so desired. The tenant pointed out that she received no response from the landlord until 30 April 2019 when the landlord was seeking to serve her with the Application for Dispute Resolution.

Analysis

13. The relevant subsections of s. 18 of the *Residential Tenancies Act, 2018* 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.

...

(8) Notwithstanding that the notice period required under subsection (1) is longer than one month, a tenant and any other tenants in the same residential premises may terminate a rental agreement by giving one month's notice to the landlord under the following circumstances:

...

(c) the tenant is required to reside with a family member because of the ill health of the family member and the notice to the landlord is accompanied by evidence of the ill health of the family member;

...

(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.

and section 34 states:

Requirements for notices

34. A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;
- (b) contain the name and address of the recipient;
- (c) identify the residential premises for which the notice is given;
and
- (d) state the section of this Act under which the notice is given.

14. I accept the tenants' claim that tenant2's father had become terminally ill and they were required to move back to [REDACTED] to be with him. The evidence also shows that they had notified the landlord 1 month before they intended to vacate the rental unit.
15. However, tenant2 is right to point out that that notice was not in the correct form, as required by s. 34.(a), and for that reason, this tenancy was not terminated in accordance with the *Residential Tenancies Act, 2018*.
16. Where a tenant vacates rented premises without first properly terminating the agreement she is considered to have abandoned the rented premises (cf., s. 31.(2) of the *Act*) and the tenant could be held liable for any damages, including a loss of rental income, caused by this abandonment. That liability is tempered by the landlord's statutory obligation to mitigate those damages by attempting to re-rent as soon as possible.
17. The landlord testified that she started advertising the unit as soon as she was notified that the tenants were moving out and she submitted evidence at the hearing to corroborate her claim that she mitigated her damages.
18. I accept the landlord's claim that despite her efforts, she was unable to secure new tenants until 01 June 2019 and she suffered a loss of rental income for the months of April and May 2019.
19. As this tenancy was supposed to run until 31 July 2019 and as the tenants had not properly terminated the agreement, I find that the landlord is entitled to compensation for her lost rental income in the amount of \$2400.00 (2 months x \$1200.00 per month).

Decision

20. The landlord's claim for compensation for her loss of rental income succeeds in the amount of \$2400.00.

Issue 3: Payment of Utilities - \$227.36

Relevant Submissions

21. The landlord stated that after the tenants moved out the electricity account was placed back in her name and she submitted bills from Newfoundland Power (█ #11) showing that she was charged \$225.67 for the period from 29 March to 31 May 2019 while the unit sat vacant.

Analysis and Decision

22. For the same reasons that were outlined in the previous section, I find that the landlord is entitled to a payment of the utilities from 29 March to 31 May 2019 in the amount of \$225.67.

Issue 4: Compensation for Damages - \$1607.00

Relevant Submissions

The Landlord's Position

23. After the tenants moved out, the landlord stated that she was required to carry out some repairs to the rental unit and she submitted the following breakdown of the costs to carry out those repairs:

• Rec Room Floor	\$1307.03
• Plaster and paint master bedroom.....	\$400.00
• Plaster and paint downstairs	\$250.00
Total.....	\$1957.03

Rec Room Floor

24. The landlord stated that she discovered that the floor in the rec room was warped after the tenants moved out and she claimed that this damage was caused by the tenants' cats urinating on the floor. She also claimed that there were scratches in the floor caused by the tenants' dog's paws.
25. In support of her claim, the landlord submitted 3 photographs showing that there were some cracks and chips in the flooring (█ #5).
26. The landlord testified that she cannot afford to repair that floor at this point in time, but she submitted an estimate from Kent (█ #6) showing that it would cost \$707.03 for 16 boxes of new laminate and underlay and a second quote from The Fixer Uppers showing that she would be charged \$600.00 to have that flooring installed.

27. The landlord stated that the laminate floor was approximately 3 to 4 years old when the tenants moved in and it was in excellent condition.

Master Bedroom

28. The landlord stated that the master bedroom was last painted in 2018 just before the tenant moved in.
29. The landlord stated that the tenants had stuck things to the walls after they moved in and when they removed the tape it also removed the paint and gyproc from the walls.
30. In support of her claim, the landlord submitted photographs of the walls showing numerous area where they had been plastered.
31. The landlord also submitted an invoice from The Fixer Uppers showing that she was charged \$600.00 to have the master bedroom repainted.

Plaster and Paint Downstairs

32. The landlord also submitted another 4 photographs (█ #10) showing the walls in the downstairs area and she pointed to additional damage which she says was caused by the tenants. Some of this damage was caused when the tenants removed the baby gate they had installed and the landlord stated that some of the other damage seems to have been the result of someone hanging things on the walls with thumbtacks.
33. The invoice from The Fixer Uppers (█ #9) shows that the landlord was charged \$300.00 to have the hallway plastered and repainted.
34. The landlord stated that the hallway was last painted about 2 years ago.

The Tenant's Position

35. Tenant2 stated that when she moved into the unit there was a carpet on the floor in the rec room. She testified that she only noticed the damage identified by the landlord after the carpet had been removed and she claimed that it must have happened before she moved in.
36. Tenant2 denied that her cats had urinated on that floor and she stated that she had installed a baby gate at the top of the stairs so her pets would not get into the rec room. She also claimed that her dog's nails are regularly clipped and it cannot have caused the damage that the landlord is complaining about.
37. Tenant2 also complained that the quote the landlord had received seemed excessive and she claimed that one could get a box of laminate for cheaper than what she was quoted.

Master Bedroom

38. Tenant2 acknowledged that the master bedroom was freshly painted before they moved in, but she claimed that there were already holes in the walls at that point.
39. Tenant2 stated that she had placed some fairy lights on the wall with an adhesive and acknowledged that some paint peeled off the wall when tried to remove the tape. She submitted her own photographs at the hearing (█ ##7-12) showing the condition of the walls when she vacated. She pointed to 4 spots on the walls where the fairy lights were affixed and there are 2 places where the paint had peeled.
40. She denied, however, that she had caused any other damage to the walls and the rest of her pictures show damage which she stated was already there when she moved in.

Plaster and Paint Downstairs

41. Tenant2 also acknowledged that she when she removed the baby gate she had installed some paint had peeled away. She submitted a photograph (█ #15) showing that damage.
42. Tenant2 denied that she had caused any other damage to the walls and she claimed that the other dents and holes that were repaired by the landlord were already there when she moved in.
43. Tenant2 also challenged the landlord's claim that these walls were painted 2 years ago and claimed that the tenants who were residing at the unit just before she moved in had been living there for 4 or 5 years.
44. Additionally, tenant1 and tenant2 questioned the landlord on the invoice she had submitted (█ #9). They pointed out that no receipts were submitted showing the costs of purchasing plaster or paint. They also pointed out that the invoice is not dated and it does not show where the work was carried out.
45. Furthermore, tenant2 claimed that after they had moved out they were informed by the landlord that she and her husband, █, were doing the plastering and painting themselves. Tenant2 stated that █ had done all of the maintenance work at the unit during the tenancy and she did not believe that the landlord had hired The Fixer Uppers, at a cost of \$900.00, to do that work.

Analysis

46. 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

47. Regarding the flooring in the rec room, I was not convinced that the landlord is entitled to an award. There was no report of an incoming inspection and the tenants claimed that this damage was pre-existing. There was also no evidence presented at the hearing establishing that there was bulging in the floor or that there was any damage caused by cat urine. I conclude that the landlord had failed to establish that this damage was caused during this tenancy.
48. With respect to the plastering and painting, I find that the landlord has failed to establish that all of the holes and scratches that she had repaired were caused by the tenants during this tenancy. There was no report of an incoming inspection and there were no photographs showing the condition of the unit when the tenants moved in.
49. The landlord testified at the hearing that neither she nor her husband, ■, carried out the plastering and painting and under questioning she stated that she instead hired a company, The Fixer Uppers, to carry out the repairs. I agree with the tenants that that testimony is probably not true.
50. On examination of the invoice and business card I note that the e-mail address on the business card is identical to the one used by ■ when he was communicating with tenant2 in August 2018 (■ #24). Just above the e-mail, the card reads: "Ask for ■". A Google search of the telephone number on the card shows that that number is associated with the business, ■, and the civic address of that business is identical to the home address listed on the landlord's application.
51. I find that the landlord is entitled to \$100.00 for the costs of repairing the 2 areas the tenants acknowledge damaging—the areas where the paint peeled in the master bedroom and in the hallway

Decision

52. The landlord's claim for compensation for damages succeeds in the amount of \$100.00.

Issue 5: Security Deposit

53. The tenants paid a security deposit of \$600.00 on 13 July 2018 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has succeeded, she shall retain the security deposit as outlined in this decision and attached order.

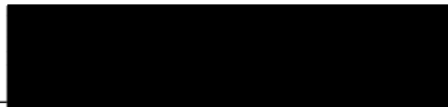
Summary of Decision

54. The landlord is entitled to the following:

a) Lost Rental Income.....	\$2400.00
b) Utilities.....	\$225.67
c) Compensation for Damages.....	\$100.00
d) LESS: Security Deposit.....	(\$600.00)
Total Owing to Landlord	<u>\$2125.67</u>

04 November 2019

Date


John R. Cook
Residential Tenancies Tribunal