

Residential Tenancies Tribunal

Decision 19-0435-05

John R. Cook
Adjudicator

Introduction

1. The hearing of applications [REDACTED] and [REDACTED] was called at 1:15 pm on 02 July 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL. Applications [REDACTED] and [REDACTED] were heard on 17 October 2019.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearings. The respondent, [REDACTED], hereinafter referred to as “the landlord”, also participated.

Issues before the Tribunal

3. The tenant is seeking a determination of the validity of a termination notice issued to him and an order for a refund of the security deposit in the amount of \$375.00.
4. The landlord is seeking an order for vacant possession of the rented premises, a payment of rent in the amount of \$675.00, a payment of late fees in the amount of \$75.00, compensation for damages in the amount of \$367.84 and authorization to retain the security deposit.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

6. Also relevant and considered in this case are sections 15 of the *Residential Tenancies Act, 2018* and Policy 9-3 Claims for Damage to Rental Premises.

Preliminary Matters

7. The landlord amended application [REDACTED]. She stated that she was no longer seeking an order for possession of the rented premises as the tenant vacated on 30 June 2019. She also stated that she was no longer seeking an order for a payment of rent as she received June's rent on 11 June 2019.
8. The tenant vacated on 30 June 2019 and I heard no evidence at the hearings concerning the matter of the validity of the termination notice issued to him and I therefore make no determination on that matter in this decision.
9. The tenant was not served with the landlord's second application, [REDACTED], which was filed with this Section on 10 July 2019. He waived his right to proper notice and requested that the 17 October 2019 hearing proceed as scheduled.

Issue 1: Late Fees - \$75.00

Relevant Submissions

The Landlord's Position

10. The landlord entered into a 1-year, fixed-term rental agreement with the tenant on 20 April 2019 and a copy of the executed lease was submitted at the hearing ([REDACTED] #6). The agreed rent was set at \$675.00 and according to the landlord's records, the tenant was required to pay a pro-rated rent of \$67.50 for April 2019.
11. The landlord issued the tenant a termination notice on 27 May 2019 and copies of that notice were submitted at the hearing ([REDACTED] #1). That notice was issued under section 20 of the *Residential Tenancies Act, 2018* (notice where material term of agreement contravened) and it had an effective termination date of 30 June 2019. The tenant moved on that date.
12. The tenant's rent was paid on his behalf by the Department of Advanced Education, Skills and Labour (AESL). The landlord's records show that she received the first payment from AESL on 17 May 2019 in the amount of \$1088.00. This amount was to cover rent for April and May 2019 as well as the security deposit.
13. That payment on 17 May 2019 was 27 days late and the next payment the landlord received was for June's rent, which was paid on 11 June 2019 and was also late.

14. The landlord has assessed a late payment fee of \$75.00.

Analysis

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

Fee for failure to pay rent

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

16. The minister has prescribed 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.

17. As the tenant has been in arrears since 21 April 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 2: Compensation for Damages – \$367.84

Relevant Submissions

The Landlord's Position

19. The landlord is seeking \$367.84 in compensation for damages and with her application she submitted the following breakdown of the costs she is seeking here (█ #1):

- Cleaning.....\$200.00
- New key fob\$63.19
- Rekey doors.....\$104.65
- Total.....\$367.84

Cleaning

20. The landlord submitted photographs at the hearing showing the condition of the unit on 30 June 2019 (█ #3). She stated that the tenant had not cleaned the unit during the 2 months that he stayed there. She stated that she was required to clean the whole apartment, including the bathrooms, kitchen, floors, cupboards and walls.
21. The landlord also testified that the tenant had not washed his dishes before he vacated and she claimed that she found mold on some dirty dishes. She also stated that he had not cleaned the linens and she was also required to wash these.
22. The landlord stated that it took her 5 hours per day, for 5 days, to finally have the unit fully cleaned. She is seeking \$200.00 in compensation for her personal labour.

New key fob

23. The landlord stated that the tenant was provided with a key fob for the alarm system and he did not return that fob to her after he vacated.
24. The landlord stated that she has replaced that fob and she submitted an e-mail from Vivint showing that a replacement would cost \$54.95 (█ #4).

Rekey doors

25. The landlord stated that she was required to rekey the locks at the rental unit after the tenant moved out and she submitted a receipt showing that she was charged \$104.95 (█ #5).
26. The landlord stated that during the tenancy the tenant was constantly going in and out of his rental unit to smoke marijuana and hashish. She stated that this behaviour made her feel uncomfortable and she did not feel safe at the unit after the tenant had moved out. It was because she did not feel safe that she felt compelled to change the locks.

The Tenant's Position

27. The tenant stated that he moved most of his possessions out of the unit on 29 June 2019 and he returned on 30 June 2019 to complete the cleaning but the

landlord denied him access to his unit. He argued that had the landlord allowed him to enter on that date he would have properly cleaned the apartment before he turned it over to the landlord.

28. The tenant also stated that the landlord's description of the unit on 30 June 2019 was inaccurate and he claimed that the pictures she submitted at the hearing were taken prior to 30 June 2019 when she did an inspection of the rental unit earlier that month.
29. The tenant claimed that all of the dishes were cleaned before he left the unit on 29 June 2019 and he testified that when he returned to the unit on 30 June 2019 he gave the landlord the bed linens which he had just washed.
30. The tenant also pointed out the rental unit is a small studio apartment and he argued that it would not have taken any more than 3 hours to clean that whole apartment.

New key fob

31. The tenant stated that he is currently in possession of the key fob but he stated that he will not return the fob to the landlord until she returns his security deposit to him.

Rekey locks

32. The tenant acknowledged that he smoked outside of his apartment but he stated that he did not see why this would make the landlord feel unsafe.

Analysis

33. I accept the landlord's claim that some cleaning was required at the unit after the tenant vacated. Based on the submitted photographs, and based on the fact that the unit was a small, studio apartment, I find that she is entitled to compensation for 5 hours of her personal labour. Policy with this Section is that applicants may charge \$19.40 per hour for their personal labour and I therefore find that the landlord is entitled to an award of \$97.00 (5 hours x \$19.40 per hour).
34. It is not disputed that the tenant had not returned the key fob to the landlord after he had moved and I accept the landlord's claim that she was required to purchase a new one. As such, her claim succeeds in the amount of \$54.95.
35. 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

36. The landlord’s claim for compensation for damages succeeds in the amount of \$151.95 (\$97.00 + \$54.95).

Issue 3: Security Deposit

37. It was not disputed that the tenant had paid a security deposit of \$372.00. As the landlord’s claim for late fees and damages has succeeded, she shall retain that portion of the security deposit and refund the remaining amount to the tenant as outlined in this decision and order.

Issue 4: Hearing Expenses

38. As both parties’ claims have been partly successful, they shall pay their own hearing expenses.


Summary of Decision

39. The tenant is entitled to the following:

- a) Refund of Security Deposit.....\$372.00
- b) LESS: Late Fees (\$75.00)
- c) LESS: Compensation for Damages (\$151.95)
- d) Total Owing to Tenant.....\$145.05

25 October 2019

Date



John R. Cook
Residential Tenancies Tribunal