

Residential Tenancies Tribunal

Decision 19-0493-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:15 pm on 29 July 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], hereinafter referred to as “the landlord”. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$1670.00,
 - An order for a payment of rent in the amount of \$1300.00,
 - An order for a payment of late fees in the amount of \$56.00, and
 - Authorization to retain the security deposit of \$975.00.

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 sections 15 and 19 of the *Residential Tenancies Act, 2018*, policy 9-3: Claims for Damage to Rental Premises and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them by telephone from the hearing room. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlord submitted affidavits at the hearing stating that the tenants were served, by e-mail, on 25 June 2019 and they have had 33 days to provide a response. The landlord also submitted copies of those e-mails as well as copies of their rental applications showing that they had provided those addresses to the landlord. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
7. The landlord amended her application at the hearing and stated that she was now also seeking rent for June and July 2019, bringing the total claim for rent to \$3900.00.

Issue 2: Rent - \$3900.00

Relevant Submissions

8. The landlord stated that she had entered into a 1-year, fixed-term lease with the tenants on 01 November 2018 and a copy of the executed lease was submitted with her application (█ #1). The agreed rent is set at \$1300.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$975.00.
9. The landlord stated that the tenants did not pay their rent as required and on 11 May 2019 she issued them a termination notice under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent). That notice had an effective termination date of 21 May 2019 and the tenants moved out a couple of days after that date.
10. The landlord stated that the tenants had left the unit in a poor state after they had vacated the unit but she nevertheless decided to list it for rent anyhow. Her company cleaned the unit and repaired the damages and it was fully ready for occupation on 17 June 2019.
11. The landlord stated that on 19 June 2019 the unit was broken into and it was "literally destroyed". She again had to carry out repairs on the property and it was not available for rent again until 25 July 2019.

12. The landlord stated that she received no rent from the tenants for May 2019 and she is seeking \$1300.00 for that month. She also argued that as the tenants had signed a lease that was not set to expire until 31 October 2019, she is also entitled to rent for June and July 2019 as she had suffered a loss of rental income for those months.
13. The landlord is seeking an order for a payment of rent in the amount of \$3900.00 (3 months x \$1300.00 per month).

Analysis

14. I accept the landlord's claim that the tenants had not paid rent for May 2019. As the landlord had terminated this rental agreement and as the tenants vacated around the effective termination date set out in the notice, I find that the landlord is entitled to rent up to that date—say, 23 May 2019.
15. I also accept the landlord's claim that the tenants had left the unit in poor condition after they had moved out and that because of the state they had left the unit in, it was not ready for occupancy until 17 June 2019. Accordingly, I find that the landlord is also entitled to compensation for the loss of rental income she suffered up until that time.
16. I also agree with the landlord that she suffered a loss of rental income after 19 June 2019 because the unit was broken into and further damages were caused making it un-rentable. However, I am not persuaded that the loss of rental income the landlord suffered between 19 June and 25 July 2019 can be pinned on the tenants. The loss of income suffered by the landlord during that period is the responsibility of whoever broke into the rental unit and caused these additional damages.
17. Accordingly, I find that that the landlord is entitled to a payment of rent for the period from 01 May to 19 June 2019. I calculate that amount to be \$2123.27 (\$1300.00 for May 2019 and \$823.27 for June 2019 (\$1300.00 for June 2019 ÷ 30 days = \$43.33 per day x 19 days = \$823.27)).

Decision

18. The landlord's claim for a payment of rent succeeds in the amount of \$2123.27.

Issue 3: Late fees - \$56.00

19. The landlord has assessed late fees in the amount of \$56.00.

Analysis

20. 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.*

21. 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

22. As the tenants have been in arrears since 02 May 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 3: Compensation for Damages - \$1670.00

Relevant Submissions

23. As indicated above, in section 1, the landlord stated that the tenants had caused damages to the unit and the landlord had incurred costs to have those damages repaired. She submitted the following work order showing the costs she had charged to the homeowner to have that work carried out (█ #2):

• Plaster holes, paint, door bell, fix screen	\$742.50
• Batteries, drywall, paint, chime	\$80.13
• Garbage removal.....	\$250.00
• Cleaning	\$300.00
• Carpet cleaning	\$79.95
Total.....	\$1452.58

Plaster holes, paint, replace door bell and fix screen
Purchase batteries, drywall, paint and chime

24. The landlord submitted a USB drive containing photographs and other documents and she pointed to a photograph showing a hole in the wall in the master bedroom. She stated that she did not see that hole when she initially did the inspection after the tenants moved out because it was covered over by a poster. The landlord also pointed out that there were other holes in the walls in the unit and some scrapes and scratches on the walls which presumably were caused when the tenants were moving out.
25. The landlord stated that these areas had to be plastered and then repainted and she stated that workers from her company completed that work in about 8 hours.
26. She also testified that she had to replace a door bell and repair a window screen and she pointed to additional photographs showing that damage. No receipts were submitted at the hearing.

Garbage removal

27. The landlord also pointed to the photographs showing the garbage that was left behind in the unit and on the back deck. There were some garbage bags left on the property and some debris in the house and on the back deck the tenants had left behind several pieces of old and broken furniture. The landlord stated that it took her company 2 hours to remove that garbage and she is seeking \$250.00 in compensation for that work.

Cleaning

Carpet cleaning

28. The landlord also pointed to the remaining photographs showing the cleanliness of the unit after the tenants vacated. She stated that the unit had to be cleaned "top to bottom". The landlord submitted a copy of an invoice at the hearing (█ #5) showing that she hired a professional cleaner at a cost of \$345.00.
29. She also submitted a second invoice (█ #6) which shows that she had hired professional carpet cleaners at a cost of \$91.94.

Analysis

30. 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;

31. Regarding the plastering and painting, the replacement of the door bell and the repairing of the window screen, I accept the landlord's claim that the tenants are responsible for the costs of carrying out these repairs. However, no receipts or invoices were submitted at the hearing showing the costs the landlord had incurred to purchase any materials and I don't accept the landlord's bill to the homeowner as an acceptable substitute.
32. The landlord testified that her company spent 8 hours repairing the walls and I will allow an additional 2 hours to deal with the screen and doorbell. Policy with this Section is that a landlord may claim \$19.40 per hour in compensation for their personal labour. Accordingly, this portion of the landlord's succeeds in the amount of \$194.00.

33. I accept the landlord's evidence showing that the tenants had left behind garbage and broken furniture and I also accept her claim that it would take 2 hours to have that garbage removed. Accordingly, I find that she is entitled to \$38.80 in compensation.
34. Regarding the cleaning, although the landlord did not provide much in way of testimony, her submitted photographs do show that the unit had not been adequately cleaned and that there were some soiled areas on the carpeted stairs. I also accept her evidence showing the costs she had incurred to hire professional cleaners. As such, her claim succeeds in the amount of \$436.94 (\$345.00 + 91.94).

Decision

35. The landlords' claim for compensation for damages succeeds in the amount of \$669.74, determined as follows

• Plaster holes, paint, door bell, fix screen	\$194.00
• Garbage removal.....	\$38.80
• Cleaning	\$436.94
 Total.....	 <u>\$669.74</u>

Issue 4: Security Deposit

36. The tenants paid a security deposit of \$975.00 on 19 October 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

37. The landlord submitted a hearing expense claim form as well as a receipt showing that she had paid \$11.48 for 2 USB drives. The landlord also testified that she had paid a filing fee of \$20.00 for the costs of filing this application.
38. As the landlord's claim has been successful, the tenants shall pay these expenses.

Summary of Decision


39. The landlord is entitled to the following:

a) Rent.....	\$2123.27
b) Late fees.....	\$75.00

c) Compensation for damages \$669.74
d) Hearing expenses..... \$31.48
e) LESS: Security deposit..... (\$975.00)
Total Owing to Landlord \$1924.49

18 December 2019

Date


John R. Cook
Residential Tenancies Tribunal