

Residential Tenancies Tribunal

Decision 19-0528-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am on 15 October 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 respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$457.50,
 - An order for compensation for inconvenience in the amount of \$243.28;
 - An order for a payment of rent in the amount of \$625.00;
 - An order for a payment of late fees in the amount of \$69.00; and
 - Authorization to retain the security deposit of \$625.00.

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 15 and 19 of the *Residential Tenancies Act, 2018*, policy 2-4: Payments Not Allowed Under the Act, policy 9-3: Claims for Damage to Rental Premises, and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

- The tenant was not present or represented at the hearing and I was unable to reach her 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) a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. The landlords submitted an affidavit with their application stating that the tenant was served with notice of the hearing, by e-mail, on 18 August 2019 and she has had 57 days to provide a response. A copy of that e-mail was submitted at the hearing as well as other e-mail exchanges the landlord had had with the tenant at that address. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in her absence.

Issue 1: Compensation for Damages - \$457.50

Relevant Submissions

- The landlord stated that she had entered into a 1-year, fixed-term lease with the tenant on 01 April 2019 and a copy of the executed lease was submitted with her application (█ #1). The agreed rent was set at \$1250.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$625.00.
- The tenant fell into rental arrears in June 2019 and on 23 June 2019 the landlord issued her a termination notice. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 03 July 2019. The tenant vacated on that date.
- The landlord stated that after the tenant vacated she was required to carry out some cleaning and garbage removal, and she submitted the following breakdown of the costs she had incurred (█ #3):

• Cleaning Fee	\$300.00
• Garbage Removal.....	\$100.00
• Locksmith Fee	\$57.50
• Total.....	<u>\$457.50</u>

Cleaning Fee

- The landlord stated that after the tenant vacated the property, extensive cleaning had to be carried out. The landlord stated that the tenant had kept a pet dog at the unit and she complained that there was dog hair everywhere and there was

even dog feces found inside the unit. She also stated that the tenant smoked in the property and there were cigarette butts all through the unit. She claimed that all the appliances needed to be cleaned and she pointed out that the tenant had left behind food in the refrigerator and in the microwave.

11. In support of her claim, the landlord submitted 9 photographs (█ #5) showing the condition of the unit after the tenant vacated. She stated that she hired a professional cleaner to clean the unit and she submitted a copy of an invoice at the hearing (█ #4) showing that she was charged \$483.00 to have that work completed.

Garbage Removal

12. The landlord also stated that the tenant had left behind a significant amount of garbage after she vacated and she had to hire someone to take that garbage to the dump. She again pointed to the submitted photographs which show that there were bags of garbage left in the apartment, that there were numerous boxes, food and beverage containers and a discarded curtain rod. The landlord stated that she was charged \$125.00 to have the garbage taken to the dump and she submitted a copy of an INTERAC e-Transfer receipt (█ #6) showing that payment.

Locksmith Fee

13. The landlord also stated that she had re-keyed the locks after the tenant vacated so that the tenant could no longer gain access to the apartment. She submitted an invoice (█ #7) showing that she was charged \$57.50.

Analysis

14. Regarding the cleaning and the garbage removal, I accept the landlord's evidence which shows that the unit had not been properly cleaned before the tenant vacated and that she had left behind garbage which had to be disposed of. I also accept the landlord's evidence showing that she was charged \$483.00 for cleaning and \$125.00 for garbage removal. That portion of her claim succeeds.
15. Regarding the charges for re-keying 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

16. The landlord claim for compensation for damages succeeds in the amount of \$608.00 (\$483.00 + \$125.00).

Issue 2: Compensation for Inconvenience - \$243.28

Relevant Submissions

17. Through this portion of her claim, the landlord is seeking compensation for the inconvenience she suffered going back and forth to the property.
18. She is seeking \$112.00 in compensation for 8 hours of her time and an additional \$111.28 for the costs of fuel. She submitted a mileage report (█ #8) to corroborate the fuel costs she is seeking here.

Analysis

19. The costs related to “going back and forth” to a rental unit to deal with tenancy related matters are costs incurred in the normal course of doing business for a landlord and they are costs for which the landlord cannot be compensated.

Decision

20. The landlord’s claim for compensation for inconvenience does not succeed.

Issue 3: Rent - \$625.00

21. The landlord submitted copies of INTERAC e-Transfer receipts (█ #9) showing the rent she had received from the tenant since she had moved in.
22. According to these records, the tenant’s rent was paid and up-to-date for the period ending 31 May 2019, but she only received \$625.00 for June 2019.
23. The landlord is seeking an order for a payment of the remaining \$625.00 owing for June 2019.

Analysis

24. I accept the landlord’s evidence which shows that the tenant had not paid rent as required and that she had only received \$625.00 in rent for June 2019. As the tenant had use and occupation of the rental unit for all of June 2019, I agree with the landlord that she is entitled to a payment of the remaining \$625.00 owing for that month.

Decision

25. The landlord’s claim for a payment of rent succeeds in the amount of \$625.00.

Issue 4: Late Fees - \$69.00

Relevant Submissions

26. The landlord has assessed late fees in the amount of \$69.00.

Analysis

27. 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.

28. 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

29. As the tenant has been in arrears since 02 June 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 5: Security Deposit - \$625.00

30. The landlord stated that the tenant had paid a security deposit of \$625.00 on 01 April 2019 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and order.

Issue 6: Hearing Expenses

31. As the landlord's claim has been successful, the tenant shall pay her hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

32. The landlord is entitled to the following:

- a) Compensation for Damages..... \$608.00
- b) Rent..... \$625.00
- c) Late Fees \$75.00
- d) Hearing Expenses \$20.00

- e) LESS: Security Deposit..... (\$625.00)

- f) Total Owing to Landlords..... \$703.00

01 April 2020

Date


John R. Cook
Residential Tenancies Tribunal