

## Residential Tenancies Tribunal

Decision 19-0627-05

John. R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 11:05 am on 23 September 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1” and “tenant2”, respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the landlord”, also participated.

### Issues before the Tribunal

3. The tenants are seeking an order for a refund of the security deposit in the amount of \$625.00, an order for a return of missing possessions valued at \$200.00 and a payment for “other expenses” totalling \$50.00.
4. The landlord is seeking an order for compensation for damages in the amount of \$749.63, a payment of rent in the amount of \$425.00, a payment for “other expenses” in the amount of \$25.00 and authorization to retain the security deposit of \$425.00.

### 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*.

## **Preliminary Matters**

6. The landlord amended her application at the hearing and stated that she was now seeking a payment for other expenses in the amount \$66.00.

## **Issue 1: Return of Possessions - \$200.00**

### **Relevant Submissions**

#### The Tenants' Position

7. The tenants and the landlord entered into a 6-month, fixed-term rental agreement, commencing 15 March 2019. The agreed rent was set at \$850.00 and the parties agreed that the tenants had paid a security deposit of \$625.00.
8. The tenants vacated the unit on 24 July 2019.
9. Tenant2 stated that on the day they were vacating they were having problems removing the TV wall mount that they had installed in the unit. She stated that the landlord had informed her that she would have her boyfriend remove it at a later date and they could come back to the apartment and collect it.
10. Tenant2 stated that when she served the landlord with notice of this hearing in late August 2019, the landlord informed her that her wall mount had been placed on the side of the house. Tenant2 complained, however, that there was no hardware left with wall mount and it was therefore useless to her. She also stated that as a month had passed since she tried to remove it, she has since purchased a new one.
11. The tenants are seeking the costs of purchasing this new wall mount. Tenant2 stated that she had paid \$199.00 + tax for the new wall mount. No receipts were submitted at the hearing.

#### The Landlord's Position

12. The landlord acknowledged that she had the wall mount and she stated that the tenants are welcome to have it back. She claimed that part of the wall mount was attached to their TV when the tenants vacated and she has removed the screws from the wall and stated that the tenants can have those back as well.

### **Analysis**

13. Section 47 of the *Residential Tenancies Act, 2018* outlines the sorts of remedies the Director may order on hearing an application filed by a tenant or a landlord. Subsection 47.(1)(f) states:

### **Order of director**

**47. (1)** After hearing an application the director may make an order

...

*(f) directing a landlord to deliver to a tenant possession of personal property taken in contravention of this Act or the rental agreement or to compensate a tenant for the value of the personal property taken;*

14. It is not disputed that the tenants had left behind a TV mount at the unit after the tenancy had ended and that it is currently in possession of the landlord.
15. However, I cannot order that the landlord return that mount to the tenants or that she compensate them for the new one they have purchased. First, the tenants have failed to establish that the landlord had “taken” the TV mount. By all accounts, it was left there by the tenants. Second, the tenants have failed to establish that there was any contravention of the *Act* on the part of the landlord.
16. As the landlord had not improperly seized the tenants’ TV mount, and as she is willing to release it to them, I suggest that if the tenants wish to retrieve the mount, they ought to make arrangements with the landlord for an agreeable date and time for pick up.

### **Decision**

17. No order for the delivery of the TV mount is required.

### **Issue 2: Other Expenses - \$50.00**

#### **Relevant Submissions**

##### The Tenants’ Position

18. Tenant2 stated that around 03 July 2019 she began to have problems with the Wi-Fi internet which was provided to the tenants as part of their rental agreement.
19. Tenant2 stated that she had called the landlord about the matter and her response was that she contact the internet service provided. Tenant2 claimed that as the account was not in her name she could not call to complain about the internet.
20. Tenant2 stated that she was unable to watch TV or Netflix during July 2019 and she also complained that the Wi-Fi was not working as it should on her smart phone.

21. The tenants are seeking a rebate of rent in the amount of \$50.00 for July 2019 as they did not have access to the internet during that month.

#### The Landlord's Position

22. The landlord stated that the tenants had complained about the internet on 09 July 2019 and as a result of that complaint she did contact her service provider. She was informed that as the Wi-fi was working on the tenant's smart phones and as the landlord was not having any issues then the problem must lie with the way the tenants had set up their TV.
23. The landlord provided her internet service provider with the name of the tenants and they instructed her to have her tenants call them and they would be walked through the steps to properly set up their TV.
24. The landlord stated that she had provided that information to the tenants but they never did call her internet service provider.

#### **Analysis**

25. The text-messages submitted by the landlord at the hearing seem to align with her version of events. On 10 July 2019 she reports to the tenants that she had called her service provider and was informed that since the tenants were able to get Wi-fi on the smart phones the issue was with the tenants' TV.
26. In that same text-message, the landlord instructs the tenants to contact the service provider and they would be given instructions on how to resolve the issue.
27. Accordingly, I find that the landlord had taken reasonable steps to resolve the tenants' complaint and I find that they have failed to establish that they are entitled to a rebate of rent.

#### **Decision**

28. The tenants' claim for a rebate of rent does not succeed.

#### **Issue 3: Rent - \$425.00**

#### **Relevant Submissions**

#### The Landlord's Position

29. The landlord stated that the tenants had entered into a fixed-term lease with her which was not set to expire until 15 September 2019.

30. She stated that she was informed on 13 June 2019 that the tenants had split up and they would be moving out of the unit. Initially, the tenants had informed her that they would move at the end of June 2019 and they later told her that they would move in mid-July 2019. Later, they again changed their minds and stated that they would now keep the unit for the duration of the lease and later again informed her that they would vacate at the end of August 2019.
31. The landlord stated that when she first got word that the tenants were moving out she started advertising the rental unit on Kijiji and copies of those advertisements were submitted at the hearing (█ #2).
32. The landlord testified that she was able to secure new tenants for 15 August 2019. She stated that she had suffered a loss of income for the period from 01 August to 14 August 2019 and she is seeking an order for a payment of a half month's rent in compensation for that loss: \$425.00.

#### The Tenants' Position

33. Tenant1 stated that he was working away during this period and he could not recall these conversations.

#### **Analysis**

34. I agree with the landlord's argument here. As the tenants had entered into a fixed-term lease that was not set to expire until 15 September 2019, they were not in a position to terminate their agreement anytime prior to that date and they were responsible for rent to that date as well.
35. As the tenants vacated the unit on 24 July 2019 without giving the landlord a proper termination notice they are considered to have abandoned the property. The landlord's evidence shows that she mitigated the damages caused by that abandonment but nevertheless suffered a loss of rental income in the amount of \$425.00. As such, her claim succeeds in that amount.

#### **Decision**

36. The landlord's claim for a payment of rent succeeds in the amount of \$425.00.

#### **Issue 4: Other Expenses - \$66.00**

#### **Relevant Submissions**

##### The Landlord's Position

37. This portion of the landlord's claim concerns the electrical utilities. She testified that when the tenants initially moved in, they did not have the electricity account placed in their name until 23 March 2019, and the landlord was billed for their electricity consumption from 15 March to 23 March 2019. The landlord submitted a copy of an e-mail from Newfoundland Power at the hearing (█ #3) showing that she was charged \$49.27 for that period.
38. The landlord also stated that she was billed for the electricity usage for the period from 24 July to 01 August 2019 and the submitted letter shows that she was charged \$17.22 for that period.
39. The landlord is seeking a payment of these utility charges in the amount of \$66.00.

#### The Tenants' Position

40. Tenant1 stated that they were late having the electricity account placed in their name because they moved in over a weekend and Newfoundland Power was not open.

#### **Analysis**

41. I accept the landlord's evidence in this matter and I find that she is entitled to compensation for the periods indicated in the letter from Newfoundland Power.
42. I calculate that she is entitled to a payment of \$66.49 (\$49.27 + \$17.22).

#### **Decision**

43. The landlord's claim for a payment of utilities succeeds in the amount of \$66.49.

#### **Issue 5: Compensation for Damages - \$749.63**

#### **Relevant Submissions**

##### The Landlord's Position

44. The landlord stated that on 11 July 2019 she received a call from the tenants informing her that they had called a plumber because of a clogged toilet. The plumber informed her that there was an issue with the toilet and it had to be replaced. The landlord paid \$749.63 for a new toilet.
45. The landlord stated that the plumber had tried to clear the blockage with an industrial snake but it would not go through the toilet because it was clogged. When the toilet was removed the plumber snaked the line and found that it was clear, meaning that the issue was with the toilet, not the plumbing.

46. The landlord stated that she inspected the toilet after it was removed and discovered that it was clogged with wadded up printer paper. She also played a video at the hearing showing the inspection of the toilet and the removal of the wadded up paper.
47. The landlord suspected that the tenants had deliberately caused that blockage in retaliation for the issues they were having with the Wi-fi.

### The Tenants' Position

48. Tenant2 stated that they had been having issues with the toilet throughout their tenancy and just a week after they moved in they had asked the landlord for a plunger. Tenant1 stated that they were plunging the toilet because of blockages about once a week.
49. Tenant2 claimed that she was informed by the plumber during his visit that the issue with the toilet was quiet common for the kind of toilet that was in the rental unit and he attributed the issue with the blockage to the fact that the toilet was a cheap model.
50. Tenant2 stated that this was the only toilet in the apartment and they would not have deliberately blocked it. Tenant1 testified that the only thing they flushed down the toilet was normal toilet paper.

### **Analysis**

51. There is no dispute that the toilet was blocked and that it was replaced by the landlord at a cost of \$749.63. The question is whether that damage was the result of any negligent or deliberate act on the part of the tenants.
52. If there was indeed printer paper flushed down the toilet, I would agree with the landlord that the tenants were negligent, at the least, in their use of the toilet. But the evidence submitted at the hearing does not bear out that claim. In the video, the landlord's partner does remove paper from the bottom of the toilet, but he does not describe it as printer paper, but rather as paper towel. But I cannot discern, from that video, how it can be determined that what was removed was wet toilet paper or wet paper towel.
53. I therefore conclude that the landlord has not submitted enough evidence to establish that this damage was caused deliberately or through the tenants' negligence. As such, her claim does not succeed.

### **Decision**

54. The landlord's claim for compensation for damages does not succeed.


**Issue 6: Security Deposit - \$625.00**

55. It is not disputed that the tenants had paid a security deposit of \$625.00 on 23 March 2019. As the landlord's claim for rent and utilities has succeeded, the landlord shall return to the tenant \$133.51 of that deposit, determined as follows:

- a) Refund of Security Deposit.....\$625.00
- b) LESS: Rent ..... (\$425.00)
- c) LESS: Utilities ..... (\$66.49)
- d) Total Owing to Tenants ..... \$133.51

24 March 2020

Date

  
John R. Cook  
Residential Tenancies Tribunal