

Residential Tenancies Tribunal

Decision 19-0688-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:05 pm on 20 February 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1” and “landlord2”, respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, also participated.

Issues before the Tribunal

3. The landlords are seeking the following:
 - A determination of the validity of a termination notice issued to them on 01 June 2019,
 - An order for a payment of rent in the amount of \$2700.00,
 - An order for a payment of late fees in the amount of \$75.00, and
 - An order for a payment of \$239.77 in compensation for damages.

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 case are sections 10 and 23 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Validity of Notice

Issue 2: Rent - \$2700.00

Relevant Submissions

The Tenant's Position

6. The tenant stated that she had entered into a rental agreement with the landlords commencing 01 December 2018. The agreed rent was set at \$900.00 per month and the tenant had paid a security deposit of \$450.00.
7. The tenant stated that a lease was drafted and provided to her to review, but she did not sign it. With respect to the term of the tenancy, the tenant claimed that she had not had any definitive agreement with the landlords but claimed that it was understood that she would rent from them long-term.
8. The tenant stated that there had been numerous problems at the unit after she took up occupancy in December 2018. She complained that there had been several leaks in her apartment, starting in January 2019, and the landlord did not get around to addressing the issue until March 2019. She also stated that she was having issues with the tenants in the upstairs unit. She complained that there was a lot of noise coming from the upstairs unit and loud arguing could often be heard. She also complained that the upstairs tenants had been blocking her parking spot.
9. The tenant also complained that, on 31 March 2019, the landlords had sent a contractor to her apartment, without notice. She testified that she was asleep in bed and she was awoken by the sound of her door being unlocked. She stated that she felt very uncomfortable and she took the key the contractor had used and turned him away.
10. The tenant also complained that the landlords had given a copy of her keys to the tenant who resided in the upstairs apartment. She stated that she had a bad relationship with that tenant and she argued that the landlords had invaded her privacy by giving that tenant free-reign of her apartment. She stated that she was concerned for her well-being and for the security of her personal possessions given that this person could come and go in her apartment whenever he pleased.
11. The tenant testified that she voiced her concerns to landlord2 during a phone call on 31 March 2019. She stated that landlord2 told her that if she did not feel safe at the apartment she could start looking for a new apartment.
12. The tenant stated that she heeded landlord2's advice and on 01 June 2019 she sent them a text-message informing them that she had moved out of the unit.
13. On 07 June 2019 she provided the landlords with a second termination notice and a copy of that notice was submitted at the hearing (█ #1). This notice was

in the form prescribed by the minister and it was issued under section 23 of the *Residential Tenancies Act, 2018* (notice where landlord contravenes peaceful enjoyment and reasonable privacy). That notice had an effective termination date of 07 June 2019.

The Landlords' Position

14. Regarding the term of the tenancy, landlord1 stated that she had agreed with the tenant that the tenancy was to run for a fixed-term of 1 year. She stated that she had drafted a lease in which the term was stated to be for a year and provided it to the tenant at the beginning of the tenancy. She stated that the tenant had made no objection to her at that time about the term of the tenancy.
15. In support of her claim that the tenant had agreed to a fixed-term lease of 1 year, she pointed to a text-message exchange she had had with the tenant on 28 November 2018 (█ #1), which reads:

Tenant: I'm in love with the apartment and think it would be the perfect fit. Do you have lease prepared or would you just prefer to go month to month?

Landlord1: I have a lease prepared and I would like a one year lease.

Tenant: Okay perfect!

16. She also pointed to an exchange she had with the tenant on 02 June 2019 (█ #2) after the tenant had informed her that she had vacated because she had felt unsafe at the rental unit and in which she claimed that she had “the right to leave before the term is up”:

Landlord1: So sorry to hear that you felt unsafe. However what do you mean “before your term is up”?

Tenant: Before the year that we had agreed upon.

Landlord1: It seems you agree we had a 12 month least agreement. If so, you have to give me a 2 month termination notice.

17. With respect to the tenant's complaints, the landlords argued that they were overblown. Landlord2 stated that he had had a conversation with the tenant leading up to 31 March 2019 and he had received permission from the tenant to have a contractor visit her unit during the weekdays, while she was at work, to attend to the issue with the leak. He acknowledged that his contractor had tried to enter on Sunday, 31 March 2019, but he claimed that this was an innocent mistake on the contractor's part and it was not a deliberate attempt to enter her unit without permission.

18. Landlord2 also argued that the reason he had given the upstairs tenant the key to her apartment was so that he could allow his workman into the tenant's unit to carry out work on those occasions that she was not around. He claimed that this was done solely as a matter of convenience for himself as he lives in [REDACTED], NL, several kilometres away from the rental unit. He denied the tenant's allegation that he had provided the upstairs tenant with the key so that he could enter her apartment.
19. Landlord1 stated that the first time she had been given any indication that the tenant was moving out was on 01 June 2019 and she pointed out that this was a full 2 months after the incident with the contractor on 31 March 2019. She argued that that was an isolated incident and that she had received no other complaints from the tenant during those 2 months.
20. Landlord1 pointed out that the tenant was in a fixed-term lease and she argued that the terminations notices she had been issued were not valid as the tenant could not terminate her agreement before the expiration date of the lease.
21. Landlord1 stated that after she regained possession of the property she started advertising the unit for re-rent. She testified that she had placed advertisements on Kijiji and Facebook and she had also posted a sign in the window of the rental unit.
22. Landlord1 stated that she was unable to secure a new tenant until 01 September 2019 and the unit sat vacant during June, July and August 2019. The landlords are seeking a payment of \$2700.00 in compensation for the loss of rental income they had suffered during those 3 months.

Analysis

23. Statutory condition 7.(b), outlined in Section 10 of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

7. Peaceful Enjoyment and Reasonable Privacy -

...

(b) The landlord shall not unreasonably interfere with the tenant's reasonable privacy and peaceful enjoyment of the residential

premises, a common area or the property of which they form a part.

and section 23 of this *Act* states:

Notice where landlord contravenes peaceful enjoyment and reasonable privacy

23. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 7(b) set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises on a specified date not less than 5 days, but not more than 14 days, after the notice has been served.

(2) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the tenant;

(b) state the date on which the rental agreement terminates and the tenant intends to vacate the residential premises; and

(c) be served in accordance with section 35.

24. I was not persuaded that the landlords had been unreasonably interfering with the tenant's peaceful enjoyment. Policy with this Section is that a tenant may issue a notice under section 23 of this *Act* where the behaviour of the landlord interferes with the tenant's enjoyment of her rented premises and where that behaviour is unreasonable and continuous.
25. I find that the tenant has established that when the landlord's contractor attempted to enter her unit on 31 March 2019 she was startled, maybe even frightened, and that that entry, without proper notice, could be considered an invasion of her privacy. That incident, then, can be seen as "interference with peaceful enjoyment".
26. However, I find that the tenant had not established that the landlords' behaviour had been unreasonable or continuous. If the tenant had given evidence that the landlords had repeatedly entered her unit, without notice and without reason, I would agree with her that she would have been in a position to issue a termination notice under section 23 of the *Act*.
27. But this entry happened on one occasion and I accept the landlords' explanation that it was entirely accidental—the contractor was merely confused about the date he was supposed to visit the property. Furthermore, the landlords were coordinating with the tenant in the previous week trying to sort out an appropriate time to enter to carry out repairs. In that respect, although there was no notice, I find that the entry was accidental, but also explainable.

28. I was also not persuaded by the tenant's argument that her peaceful enjoyment had been interfered with because the upstairs tenants had a key to her unit. There was no evidence presented to the Board to establish that these keys had been used for any unauthorized entry into the tenant's unit and the landlords' explanation for why they had provided that tenant with the keys seemed very reasonable. It was as if the upstairs' tenant was playing the role of a superintendent or property manager.
29. For these reasons, I find that the tenant's termination notices were not valid.
30. In any case, the notices also contained technical defects which also rendered them invalid. Section 34 of the *Act* 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.*

The text-message the tenant sent to the landlords on 01 June 2019 met none of these requirements.

31. The notice sent on 07 June 2019 did comply with section 34, but it, and the notice sent on 01 June 2019, both run afoul of the requirement that a notice under this section of the *Act* has to specify a termination date that is not less than 5 days after the notice is issued. On 01 June 2019 the tenant stated that she had already moved out and the notice issued on 07 June 2019, even though it is dated 01 June 2019, has an effective termination date of 07 June 2019. The notice issued on 01 June 2019 had to specify a termination date no earlier than 07 June 2019, and the notice issued on 07 June 2019 had to specify a date no earlier than 13 June 2019.
32. As the tenant had not terminated her agreement in accordance with the *Residential Tenancies Act, 2018*, she is considered to have abandoned the rented premises. Where a tenant abandons residential premises she is liable for any damages that are caused a result of that abandonment, including any loss of rental income suffered by the landlords, so long as the landlords take all reasonable steps to mitigate those damages.
33. The evidence submitted by the landlords shows that they had taken all reasonable steps to find new tenants after the tenant abandoned the property in

early June 2019, but despite those efforts the unit sat vacant for the months of June, July and August 2019 and they received no rental income during that period.

34. The evidence submitted by the landlords also shows that, despite the fact that the rental agreement had not been signed, the tenant had agreed to rent the unit for a fixed period of 1 year and the lease was not set to expire until 30 November 2019.
35. Accordingly, as the tenant abandoned the rented premises and had not issued the landlords a proper termination notice, and as the tenant could not have terminated her agreement prior to 30 November 2019, I find that she is responsible for loss of rental income the landlords suffered during June, July and August 2019. As such, the landlord's claim succeeds in the amount of \$2700.00.

Decision

36. The landlord's claim for a payment of rent succeeds in the amount of \$2700.00.

Issue 2: Late Fees - \$75.00

Relevant Submissions

37. The landlords have assessed late fees in the amount of \$75.00.

Analysis

38. 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.*

39. 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.

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

Decision

41. The landlords' claim for late fees succeeds in the amount of \$75.00.

Issue 3: Compensation for Damages - \$239.77

Relevant Submissions

The Landlord's Position

42. With their application, the landlords had submitted a breakdown (█ #5) of the costs to advertise the unit, to clean and to carry out repairs after the tenant moved out. The breakdown is as follows:

• Advertising.....	\$20.58
• Clean oven	\$38.00
• Floors and walls	\$38.00
• Bathroom.....	\$19.00
• Wall damage	\$38.00
• Gas Expense.....	\$61.60
• Key.....	\$4.59
 Total.....	 <u>\$219.77</u>

Advertising

43. Landlord1 pointed to Exhibit █ #4 which shows that she had placed 2 advertisements on Kijiji. That exhibit shows that the landlords were charged \$20.58 to place those ads.

Cleaning

44. Landlord1 stated that she had to spend 2 hours cleaning the oven and she complained that she had to purchase a scraper to remove the dirt from the cooktop. No photographs were submitted at the hearing.

45. Landlord1 also complained that the floors were dirty and there was spillage on the floor in the master bedroom. She is also seeking compensation for 2 hours of her labour to clean these floors. No photographs were submitted at the hearing.

46. With respect to the bathroom, landlord1 again complained that this room had not been cleaned before the tenant moved out. She stated that she was required to clean the toilet and bathtub, and the vanity also had to be cleaned out.

Wall Damage

47. Landlord1 also stated that a sofa or television had been pushed up against the wall in the living room area causing the paint to peel off the wall. That area had to be plastered and repainted and the landlords are seeking compensation for 2 hours of their personal labour to carry out those repairs.

Gas

48. Landlord2 stated that he lives in [REDACTED] and the rental property is located in St. John's. He is seeking compensation in the amount of \$61.60 for the costs of gasoline for making 2 roundtrips to the rental unit. No receipts were submitted at the hearing.

Keys

49. Landlord1 stated that the tenant had only returned 1 key to her after she moved out, but she was supposed to return 2. She submitted a receipt at the hearing ([REDACTED] #6) showing that she was charged \$13.76 to have 3 new keys cut.

The Tenant's Position

Advertising

50. The tenant made no comments on this portion of the landlord's claim.

Cleaning

51. Regarding the oven and cooktop, the tenant stated that this appliance was in the same condition when she moved out as it was when she moved in. She also stated that she rarely used the oven.
52. With respect to floors, the tenant claimed that she had no recollection of there being any stains in the bedroom. She claimed that the only stains on the floors were in the areas where there had been leaks from the upstairs apartment.
53. The tenant also denied the landlord's claim that the bathroom required cleaning.

Wall Damage

54. The tenant acknowledged that she had caused the damage to the wall described by the landlords and she stated that the costs that the landlords are seeking here are reasonable.

Gas

55. The tenant argued that the costs associated with traveling to the rental unit are the normal costs of operating a business for a landlord.

Keys

56. The tenant stated that she thought she had returned 2 keys to the landlords.

Analysis

57. 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

- 58. Regarding the costs of advertising, I find that the landlord's are entitled to the costs they are seeking here. Where a tenant abandons rented premises, she is responsible for any damages that are caused by that abandonment, including the costs incurred by the landlords to mitigate those damages.
- 59. With respect to the cleaning, though, that claim does not succeed. No photographs were submitted at the hearing to corroborate the landlords' claim that cleaning was required and there was no report of an incoming or outgoing inspection.
- 60. The tenant did not contest the landlord's claim for the costs of repairing the wall, so that claim is successful.
- 61. Regarding the costs associated with travelling to and from the rental unit, I agree with the tenant that these are costs associated in the normal course of doing business for a landlord. I also do not see why the tenant should be held responsible for the landlords' decision to reside so far away from their place of business.
- 62. The landlord's claim for purchasing new keys also does not succeed. Policy with this Section is that a landlord cannot charge the tenant for the replacement of locks or the costs of issuing new keys unless they were damaged by the tenant or the tenant's visitors. Replacing locks and issuing new keys 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

63. The landlords' claim for compensation for damages succeeds as follows:

• Advertising.....	\$20.58
• Wall damage	\$38.00
Total.....	<u>\$58.58</u>

Issue 3: Security Deposit

64. The tenant paid a security deposit of \$450.00 on 05 December 2018. As the landlords' claim has been successful, they shall retain that deposit as outlined in this decision and attached order

Issue 4: Hearing Expenses

Relevant Submissions

65. The landlords submitted a receipt for \$20.00 for the costs of filing the claim and a copy of a receipt showing that they were charged \$100.00 for the costs of hiring a process server. As the landlords' claim has been successful, the tenant shall pay these hearing expenses.

Decision

66. The landlord's claim for hearing expenses succeeds in the amount of \$120.00.

Summary of Decision

67. The landlord is entitled to the following:

a) Rent	\$2700.00
b) Late Fees	\$75.00
c) Utilities	\$58.58
d) Hearing Expenses	\$120.00
e) LESS: Security Deposit	(\$450.00)
f) Total Owing to Landlord	<u>\$2503.58</u>

25 May 2020

Date


John R. Cook
Residential Tenancies Tribunal