

Residential Tenancies Tribunal

Decision 19-0742-05

John. R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:35 pm on 02 December 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, did not participate in the hearing. The respondent, [REDACTED], hereinafter referred to as “the landlord”, was in attendance and participated.

Issues before the Tribunal

3. The tenant is seeking the following:
 - A determination of the validity of a termination notice issued to him on 03 September 2019,
 - An order for a refund of rent in the amount of \$1500.00,
 - An order for a payment of utilities in the amount of \$1500.00, and
 - An order for a payment of “other expenses” in the amount of \$400.00.
4. The landlord is seeking the following:
 - An order for compensation for inconvenience in the amount of \$400.00,
 - An order for compensation for damages in the amount of \$1800.00, and
 - Authorization to retain the \$600.00 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 Policy 9-3 Claims for Damage to Rental Premises, Policy 12-1 Recovery of Fees: Filing Costs, Hearing Expense, Interest, Late Payment and NSF, and Rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

7. The tenant was not present or represented at the hearing and I was unable to reach him 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 respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he has been properly served. The landlord testified that he personally served the tenant with notice of the hearing on 17 September 2019 and he has had 75 days to provide a response. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
8. As the tenant did not attend the hearing and presented no evidence in support of his claim, his application, [REDACTED], was dismissed.
9. This is the second application this Tribunal has heard concerning this tenancy. As a result of a hearing held on 09 October 2019 ([REDACTED]), the landlord was authorized to retain the \$600.00 security deposit and set it off against the \$897.96 that was owing in rent.
10. The landlord amended his application and stated that he was now seeking \$2400.00 in compensation for damages. I further amended the landlord's application and removed his claim for the security deposit as it was disposed of as a result of the previous hearing.

Issue 1: Compensation for Damages: \$2400.00

Relevant Submissions

11. The landlord stated that he had entered into a rental agreement with the tenant in October 2009. In September 2019, the tenant fell into rental arrears and the landlord issued him a termination notice for failure to pay rent. The tenant vacated on 06 October 2019.
12. The landlord stated that on 02 July 2019 the residents in the adjoining apartment informed the landlord that there was water in their furnace room. After carrying out an inspection, it was determined that the water had entered from the tenant's furnace room.

13. The landlord had the furnace inspected and it was determined that the expansion tank on the furnace had been blowing off water.
14. The landlord stated that the tenant offered to clean up the mess in the furnace room and the landlord accepted that offer. However, on 17 July 2019 when the repair person came to the unit to repair the furnace, he refused to carry out any work because there was black mould on the walls. The landlord submitted 3 photographs at the hearing showing that mould (█ ##2-4).
15. The landlord stated that because of the mould and water damage, he had to replace the drywall in the furnace room as well as some 2 x 4 studs. He stated that he spent \$185.85 for the drywall and he is also seeking \$80.00 for the 2 x 4s. No receipts were submitted at the hearing.
16. The landlord submitted an additional 25 photographs at the hearing showing the condition of the unit after the tenant moved out in October 2019. These photographs show that the unit was left in a very dirty state. The tenant had left behind a significant amount of garbage and personal belongings and it was apparent that no cleaning had been carried out for some time. The floors were covered in dirt and dust and all the walls were also dirty and stained.
17. The landlord also pointed out that the unit also needed to be repainted. He complained that there was dirt and marks on the walls, as well as pinholes where the tenant had been hanging pictures. He also pointed out that one can see the outlines on the walls where the tenant had hung pictures.
18. The landlord submitted a quote at the hearing (█ #5) showing that he would be charged \$1265.00 to have the unit professionally cleaned and a second quote (█ #6) showing that he would be charged \$4025.00 to have the unit painted. To the date of the hearing, the unit has not been cleaned or painted. The landlord stated that the unit was last painted in 2009.

Analysis

19. 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

20. Regarding the black mould that developed in the laundry room, I was not persuaded that this was the fault of the tenant. As the expansion tank had released water into the furnace room and then entered the adjoining apartment, it seems likely that the drywall would have already suffered water damage and would have been prone to mould growth.
21. As there was no evidence presented to establish that the tenant was responsible for the malfunction in the expansion tank, I find that he is not responsible for the costs the landlord is seeking here. Furthermore, the landlord presented no receipts or quotes at the hearing to establish these costs.
22. Regarding the painting, I also find that the landlord's claim does not succeed. It is evident that the walls need cleaning (I address this in the next paragraph), but I am not able to detect any damage to these walls in the landlord's photographs that exceeds normal wear and tear. As a landlord is expected to re-paint the walls in a rental unit every 3 to 5 years, and as this unit was last painted in 2009, I find that the paintjob had outlived its life expectancy and the landlord would have had to repaint the apartment anyhow.

23. With respect to the cleaning, it is evident, based on the photographs that were submitted at the hearing, that the tenant had not been regularly cleaning the apartment during his tenancy. In the photographs, dirt and dust can be seen on all surfaces and there is grime and stains on the walls and the ceiling. Based on this evidence, I find that the landlord is entitled to the full costs he is seeking here: \$1265.00.

Decision

24. The landlord's claim for compensation for damages succeeds in the amount of \$1265.00.

Issue 2: Compensation for Inconvenience - \$400.00

Relevant Submissions

25. The landlord stated that he has had to take time off work to attend these hearings. He complained that the tenant had requested postponements at the last minute meaning that he had to take even more time off for the rescheduled hearings.
26. The landlord is seeking \$400.00 in compensation for time he had to take off work to attend these hearings.

Analysis

27. Policy with this Section is that applicants are able to make a claim for the costs associated with the preparation for a hearing. Claimable hearing expenses include the fee for filing the application, the costs associated with serving the respondent with the application, the costs of photocopying or film development, and the costs of subpoenaing witnesses.
28. Lost wages or the costs associated with the time it takes to attend a hearing are not claimable expenses.

Decision

29. The landlord's claim for compensation for inconvenience does not succeed.

Issue 3: Hearing Expenses

30. The landlord submitted a receipt at the hearing showing that he was charged \$5.69 to have photographs developed and he also paid \$20.00 to file this

application. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

Summary of Decision

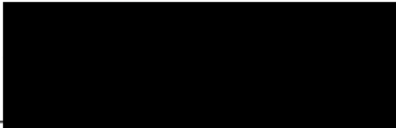
31. The landlord is entitled to the following:

- Compensation for Damages..... \$1265.00
- Hearing Expenses \$25.69

- Total Owing to Landlord \$1290.69

23 April 2020

Date



John R. Cook
Residential Tenancies Tribunal