

Residential Tenancies Tribunal

Decision 19-0796-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:05 pm on 09 January 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1” and “landlord2”, respectively, also participated.

Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$900.00.
4. The landlords are seeking an order for a payment of rent in the amount of \$2400.00, compensation for damages in the amount of \$1483.50 and authorization to retain the 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 this case are sections 10 and 23 of the *Residential Tenancies Act, 2018* and Policy 9-3 Claims for Damage to Rental Premises.

Preliminary Matters

7. Landlord2 amended their application at the hearing and stated that they were now seeking an additional \$2400.00 in rent for a total claim of \$4800.00.

Issue 1: Rent - \$4800.00

Relevant Submissions

The Tenant's Position

8. The landlords and the tenant entered into a 1-year, fixed-term rental agreement commencing 15 June 2019 and a copy of the executed lease was submitted at the hearing (█ #1). The agreed rent was set at \$1200.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of 900.00.
9. The rental unit is the upstairs apartment of a bungalow, and the basement apartment is also rented out by the landlords. The tenant stated that she is a single mother and she lives with her 3 children.
10. The tenant stated that the landlord had rented the basement apartment to █ in June 2019 and she claimed she had been having issues with her ever since she moved in. The tenant claimed that there was a lot of loud noise coming from the basement apartment and she testified that she was concerned that there was drug use taking place in the unit as she noticed a lot of traffic to and from the apartment.
11. Additionally, the tenant claimed that █'s partner would oftentimes get into loud altercations with █ and their yelling and screaming could be heard in her unit at all hours of the day and night. She also claimed that she was able to hear a lot of abusive language and she feared that █'s partner was also being physically abusive.
12. The tenant stated that on one occasion, she was so concerned for the well-being of █, that she called the police and they visited the basement apartment.
13. The tenant also testified that, although the apartments were advertised as non-smoking units, there was a strong smell of smoke coming from █'s apartment. She stated that part of her rental unit included a basement rec room that was adjacent to █'s, but she claimed that it was unusable because it "smelled like an astray".

14. In support of her claim, the tenant submitted into evidence a copy of the e-mails she had sent to the landlords since 30 June 2019 (█ #4) in which she complains about █ and the issues that she is having at her rental unit. She also submitted into evidence a notebook (█ #5) in which she had recorded the dates and times of the various issues she had witnessed at the rental unit.
15. The tenant stated that the noise and abusive yelling that could be heard coming from █'s apartment was interfering with her peaceful enjoyment and she stated that she was particularly concerned about the welfare of her 3 children. She argued that it was unhealthy for them to be subjected to the abusive fighting that could be heard coming █'s apartment and in order to avoid it she oftentimes had to have all 3 of her children sleep in the same room.
16. In the e-mails submitted by the tenant, the landlords do indicate that they have spoken to █ about the various issues and on 19 July 2019 they indicate that they are going to evict her. That did not come to pass, and on 24 August 2019 the tenant informs the landlord, by e-mail that she is terminating their rental agreement, effective 30 September 2019. She also sent to the landlords a notice of termination in the prescribed form (█ #3). That notice was issued under section 23 of the *Residential Tenancies Act, 2019* (notice where landlord contravenes peaceful enjoyment and reasonable privacy). The tenant vacated on 30 September 2019.

The Landlords' Position

17. Landlord2 stated that he believed that the tenant was fabricating the issues she was having with █. He stated that he had spoken with the tenant's neighbours and they reported to him that they were unaware of any issues with █. He concluded that the tenant's complaints were unfounded.
18. Landlord1 stated that the tenant "had no use" for █ from the time she moved in and she constantly complained about her. She stated that the tenant complained about the smell of cigarettes and marijuana and on one occasion even accused █ of "cooking meth". Landlord1 went to the basement apartment to investigate, and the smell that the tenant had complained about was actually the smell of bacon.
19. Landlord2 stated that he visited the rental unit on a couple of occasions after the tenant complained about the smell of cigarette and marijuana smoke and he stated that he was unable to detect any smell. He acknowledged that █ smokes outside of her unit, but he argued that there is no way that the smell of smoke can enter the tenant's unit. He concluded that her complaint was "pure fiction".
20. Landlord2 suggested that the real reason that the tenant had terminated their agreement was because she was moving in with someone and she was looking for a way to break the lease.

21. Landlord2 stated that as [REDACTED] had not been interfering with the tenant's peaceful enjoyment, she was not in a position to terminate her rental agreement and she is still responsible for the rent that is owed at the unit until the expiration of the lease. He is seeking rent for the months of October 2019, November 2019, December 2019 and January 2020: \$4800.00.
22. Landlord1 stated that they have the rental unit listed with a property management company and in support of that claim she submitted an e-mail from that company ([REDACTED] #2), dated 28 October 2019, in which a representative writes that she has had the property listed for the month of October 2019. Landlord2 stated that despite their efforts to re-rent the unit it is currently vacant.

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 found the testimony of the tenant to be credible, consistent and believable.
25. Based on that testimony, I find that ■■■ had frequently been having loud arguments with her boyfriend in the rental unit and that these arguments could be heard at all times of the day and night. I also find that abusive language was used during these altercations. In addition, I find that the tenant was able to smell smoke in her unit which was coming from ■■■'s apartment.
26. That testimony was bolstered by her documentary evidence which shows that she had been complaining to the landlords about these issues since the beginning of July 2019.
27. Having to live in a rental unit directly above an apartment where this sort of behaviour was taking place would clearly interfere with a person's peaceful enjoyment, especially considering that there were 3 children residing there.
28. After making repeated complaints to the landlord during July and August 2019, that behaviour continued and the landlords did not follow through with their promise to evict ■■■
29. Accordingly, I find that the tenant was in a position to terminate her rental agreement under section 23 of the *Residential Tenancies Act, 2018* and the tenancy ended on 30 September 2019.
30. As the tenancy was terminated effective 30 September 2019, the landlords have no claim to rent after that period.

Decision

31. The landlords' claim for a payment of rent does not succeed.

Issue 2: Compensation for Damages - \$1483.50

Relevant Submissions

The Landlords' Position

32. With their application, the landlords had submitted a quote (█ #3), dated 23 October 2019, from their own contracting company, for the costs of having the following work carried out:

a) Remove Garbage	\$80.00
b) Repair hole in wall	\$260.00
c) Repair damaged ceiling.....	\$950.00
d) HST	\$193.50
e) Total	<u>\$1483.50</u>

Garbage Removal

33. Landlord2 stated that the tenant had left behind some cardboard, garbage and a broken book case in the garage after she had vacated. No photographs were submitted at the hearing showing that garbage. He stated that a worker from his company removed that garbage and took it to the dump sometime in October 2019. The landlords are seeking \$80.00 in compensation. No receipt or invoice was submitted at the hearing.

Repair Hole in Wall

34. Landlord2 stated that the tenant had damaged the wall at the top of the stairs causing there to be a 3-inch hole in the drywall. No photographs were presented at the hearing showing this damage.

35. Landlord2 stated that a worker from his company made 3 trips to the unit to plaster and sand that hole and then the wall was repainted. He is seeking \$260.00 in compensation. No receipts or invoices were submitted at the hearing.

Repair Damaged Ceiling

36. Landlord2 stated that in mid-July 2019 the sink in the laundry room overflowed, causing damage to the ceiling in the downstairs laundry room. No photographs were submitted at the hearing showing this damage.

37. Landlord2 stated that this ceiling had to be replaced. He stated that 2 sheets of drywall had to be installed, then plastered and painted. He is seeking \$950.00 in compensation. No receipt or invoice was submitted at the hearing.

The Tenant's Position

Garbage Removal

38. The tenant acknowledged that she had left behind some garbage in the garage. She stated that she had intended to put that garbage out for the bulk garbage collection which was to take place on 07 October 2019, but she vacated on 30 September 2019.
39. The tenant testified that she had sent an e-mail to the landlords (█ #4, 20 September 2019) informing them that the garbage would be left there for bulk garbage collection and she pointed out that they did not respond to that e-mail and made no demand that she remove that garbage.

Repair Hole in Wall

40. The tenant stated that the hole in the wall was caused by her 6-year old daughter when she lightly bumped into the wall. This happened in the first week of her tenancy.
41. The tenant stated that it was obvious there had previously been a hole in the wall and that it had then been repaired with plaster and paper towels, making that portion of the wall particularly weak.
42. The tenant complained that it would not cost \$260.00 to repair that small hole.

Repair Damaged Ceiling

43. The tenant acknowledged that the laundry room sink had overflowed. She stated that there was no trap in the sink to prevent items going down the drain and a rag had therefore become lodged in the drain while the washing machine was draining.
44. The tenant informed the landlords about that matter and they had the laundry room sink replaced. She testified that she was not informed that there was any damage caused to the ceiling in the room below the laundry room and she was not given any indication that the landlords were holding her responsible for the costs to have it repaired.
45. The tenant also pointed out that it was evident that there was already water damage on the floor in that laundry room and she claimed that the pipes under the laundry room sink had been leaking. When the landlords replaced the sink after the overflow, they also replaced all the pipes in that room.

Analysis

46. 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*

47. It was not disputed that the tenant had left behind some garbage in the garage and I agree with the landlords that it ought to have been removed before she vacated. I find that \$80.00 is fair compensation for the costs to have that garbage taken to the dump.

48. Regarding the hole in the wall, I find that the landlords have failed to establish that that damage was caused by any deliberate or negligent act on the part of the tenant. I accept the tenant's testimony that there was a previous hole in the wall which had been poorly repaired and it seems probable that this poor workmanship had contributed to the damage.
49. I also find that the landlords have failed to establish that the tenant was responsible for the damage to the ceiling in the downstairs laundry room. Firstly, the landlords have failed to establish that there was any damage caused to that ceiling as no photographs or videos were submitted at the hearing showing that damage and the tenant testified that she was not informed that any damage had been caused. Secondly, it seems probable that part of the reason the sink overflowed was because the sink was faulty—that was the reason the landlords had the sink replaced after this accident. That is not the tenant's fault. As such, that claim does not succeed.

Decision

50. The landlord's claim for compensation for damages succeeds in the amount of \$80.00.

Issue 3: Security Deposit - \$900.00

51. The tenant paid a security deposit of \$900.00 on 19 May 2019 and receipt of that deposit is acknowledged in the submitted lease. As the landlords' claim for compensation for damages has been partly successful, they shall retain that portion of the security deposit and return the remainder to the tenant as outlined in this decision and attached order.

Issue 3: Hearing Expenses

52. The tenant submitted a receipt with her affidavit of service showing that she had paid \$15.24 to send the application to the landlords by Xpresspost. As the tenant's claim has been successful, the landlords shall pay that hearing expense.


Summary of Decision

53. The tenant is entitled to the following:

- a) Refund of Security Deposit\$900.00
- b) Hearing Expenses\$15.24
- c) **LESS: Compensation for Damages(\$80.00)**
- d) Total Owing to Tenant.....\$835.76

27 April 2020

Date



John R. Cook
Residential Tenancies Tribunal