

## Residential Tenancies Tribunal

Decision 19-0836-05

John R. Cook  
Adjudicator

---

### Introduction

1. The hearing was called at 9:20 am on 28 November 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to “tenant1” and “tenant2”, respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the landlord”, participated by teleconference.

### Issues before the Tribunal

3. The tenants are seeking the following:
  - An order for a refund of the security deposit in the amount of \$750.00,
  - An order for compensation for inconvenience in the amount of \$641.00, and
  - An order for compensation for damages in the amount of \$4226.00.

### 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 case are sections 10, 14 and 18 of the *Residential Tenancies Act, 2018* and policy 9-4: Claims for Damage to Tenants Personal Belongings.

## Issue 1: Security Deposit - \$750.00

### Relevant Submissions

#### The Tenants' Position

6. Tenant1 stated that they had entered into a monthly rental agreement with the landlord on 01 September 2017. The agreed rent was set at \$1150.00 and tenant1 stated that she had paid a security deposit of \$750.00.
7. Tenant1 testified that in mid-October 2019 the landlord had called her, was screaming at her, and told her to vacate the unit immediately. She stated that they vacated the unit on 22 October 2019.
8. Tenant1 stated that the landlord had informed her that he would return the security deposit to the tenants after they vacated and she had provided him with her bank account number for deposit. She claimed that the landlord never did return that deposit, however. She also testified that she had not entered into a written agreement with him on its disposition.
9. The tenants are seeking an order for a return of the security deposit in the amount of \$750.00.

#### The Landlord's Position

10. The landlord acknowledged that the tenants had paid a security deposit of \$750.00 and he also acknowledged that he had not returned it to the tenants.
11. The landlord stated that he retained the deposit because of the damages which were caused at the rental unit. He testified that he was informed by staff at this Section that he should not return the deposit and that he should wait to have the disposition of the deposit determined by an adjudicator at a hearing.

### Analysis

12. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

#### ***Security deposit***

**14. (8)** *A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.*

**(9)** *Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.*

(10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

(11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

13. I accept tenant1's claim that the deposit had not been returned to her after she moved out and I also accept her claim that she had not entered into any written agreement with the landlord on the disposition of that deposit.
14. As the landlord had not made application to the Director seeking a determination of the disposition of that deposit, he is required, as per s. 14.(2), to refund the full amount of that deposit to the tenants.

## Decision

15. The tenants' claim for refund of the security deposit succeeds in the amount of \$750.00.

## Issue 2: Compensation for Inconvenience - \$641.00

### Relevant Submissions

#### The Tenant's Position

16. Tenant1 argued that they were inconvenienced because they had to vacate the unit on short notice and she claimed that she had incurred costs to carry out that move. With her application, she submitted a breakdown (█ #3) of the costs she had incurred during the move:

- U-Haul truck to storage unit..... \$70.00
- Gas..... \$20.00
- U-Haul storage ..... \$135.00
- U-Haul to new apartment..... \$70.00
- Gas..... \$20.00
- Helpers with cars..... \$100.00

- 2 nights at hotel ..... \$226.00
- Total ..... \$641.00

17. In support of her claim, tenant1 submitted a receipt (█ #4) showing that she was charged \$69.45 to rent a U-Haul truck, a receipt (█ #5) showing that it cost \$149.95 + tax per month to rent a storage locker and 2 receipts (█ #6, #7) showing that they incurred \$227.70 to stay at a hotel for 2 nights.
18. Tenant1 also testified that the landlord had told her that he would pay her \$75.00 per night for their accommodations until they found a new place to move into.

The Landlord's Position

19. The landlord pointed out that there was a mold issue at the rental unit and the tenants did not want to stay there because of that issue and they had already been looking for a new apartment for months.
20. He testified that when the tenants told him about the mold issue at the unit, he informed them that, out of a concern for their health, they ought to move out of the unit.
21. The landlord acknowledged that he had initially offered to pay \$75.00 to the tenants while they looked for a new apartment. He testified that he had only done that, however, as the tenants were threatening to have the City of St. John's inspect the unit and because they had told him they were going to get lawyers.

**Analysis**

22. I accept the testimony of the tenants in this matter and I find that the landlord had instructed them to immediately move out of the rental unit in mid-October 2019. But in a month-to-month tenancy, landlords are required, under s. 18 of the *Residential Tenancies Act, 2018*, to provide tenants with at least 3-months' notice that the tenancy is ending.
23. I also accept the tenants' claim that moving on such short notice must have been an inconvenience and I agree with them that the landlord is responsible for compensating the tenants for any costs they would have incurred as a result of not providing them with proper notice.
24. However, I don't agree that the costs of moving is the responsibility of the landlord as the tenants agreed, with the landlord, that they were indeed seeking a new place to live. Whether the tenants vacated at the end of October 2019 or at the end of January 2020, had they been given proper notice by the landlord, they would have incurred those costs anyhow.

25. But I do agree that the landlord is responsible for the costs of accommodations while they sought a new apartment as it would have been highly unlikely that they could have found a new place to live in the short timeframe the landlord had given them.
26. The evidence submitted by the tenants shows that they had paid \$227.70 to stay at a hotel for 2 nights, and I find that the tenants' claim therefore succeeds in that amount.

### **Decision**

27. The tenant's claim for compensation for inconvenience succeeds in the amount of \$227.70.

### **Issue 3: Compensation for Damages - \$4226.00**

28. The tenants stated that there had been an ongoing problem with mold at the rental unit for about a year. They claimed that this issue had arisen as a result of a leak in the roof and the resulting water damage. In support of that claim, the tenants submitted photographs showing mold on windows and window sills, in the corners of various rooms and on a number of baseboards (■■■■ #8-18).
29. The tenants complained that the landlord had not adequately addressed that issue and the problems continued. They stated that his worker had merely patched the roof, instead of the landlord having it replaced, and they claimed that they had to have buckets in their room to collect water which had been dripping from a hole which had been cut into the ceiling.
30. Tenant1 stated that she was constantly cleaning the mold from the walls and the windows with bleach but it would always return. And tenant2 complained that, instead of replacing the roof, the landlord had provided them with a hose and had instructed him to syphon off any water that collected on it.
31. Tenant1 stated that the mold had not only been growing on the walls and windows, but it was also found on their beds, furniture and clothing and additional photographs were submitted at the hearing showing this contamination (■■■■ #19-30). These photographs show that mold can be seen on various pieces of clothing, on several pairs of shoes, on a baseball cap and on the back of a dresser.
32. Tenant1 stated that because the mold had transferred to these personal items, the tenants disposed of them when they vacated and they are seeking \$3255.00 in compensation for the costs of replacing these items. She submitted 2 pieces of notebook paper on which she had broken out the costs they are seeking (■■■■ #31). The tenants are seeking \$2000.00 to replace 2 beds, 2 box springs, 2 dressers, a bed frame and head board, 2 night tables and a highboy dressers.

They are also seeking \$1255.00 for the replacement costs of various pieces of clothing.

33. No receipts or estimates were submitted by the tenants showing the costs of the items they had disposed of and no receipts were submitted showing any replacement costs.

#### The Landlord's Position

34. The landlord denied that he was responsible for the mold issue the tenants had complained about.
35. He acknowledged that there had been a leak at the rental unit but he claimed that he had the roof patched when the tenants complained about it and it has not leaked since.
36. According to the landlord, the mold was caused by the tenants as they had not been adequately heating the apartment and because they were taking up to 5 "steam showers" per day. He claimed that the fan in the bathroom was not working properly and the unit was not adequately ventilated, causing there to be excess moisture in the apartment.

#### **Analysis**

37. Under Section 10.(1)1. of the *Residential Tenancies Act, 2018* the landlord is required to keep the rented premises in a good state of repair:

1. Obligation of the Landlord -

*(a) The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.*

*(b) Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.*

Where a landlord fails to maintain premises in a good state of repair and where the disrepair causes damage to a tenant's property or possessions, the landlord can be held liable for the costs of repair or replacement.

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 landlord to compensate the tenant 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*

38. There was no dispute that there is a mold issue at the rental unit. Mold is typically caused by 1 of, or a combination of, excess moisture, cold temperatures or poor ventilation.
39. I accept the tenants' testimony and photographic evidence showing that there were repeated leaks at the unit and that the landlord had not had this issue properly repaired. In that respect, I find that he is in contravention of his statutory obligations, quoted above.
40. The landlord presented no evidence at the hearing to corroborate his claim that the tenants were not adequately heating the unit.
41. He also presented no evidence to corroborate his claim that the bathroom fan was not working. But even if that testimony were true, that would only show another way in which the landlord had not been maintaining the unit in a good state of repair. It is the landlord's responsibility to ensure that tenants are provided with a bathroom fan that is in a good state of repair.
42. Accordingly, I find that it is the landlord's failure to maintain the unit in a good state of repair which probably led to the mold growth in the rental unit. I also find

that his failure to properly maintain his property led to growth of mold on the tenants' possessions.

43. However, I find that the tenants' claim for the costs of replacing their furniture and clothing does not succeed.
44. Firstly, I was not convinced that all of these items needed to be disposed of. The photographs submitted by the tenants do show a mattress and box spring in the back of a pickup truck, but I am unable to see any mold in those photographs. I don't see any mold in the photograph of the bedframe or dresser, either. No photographs were submitted showing the night tables or highboy.
45. Secondly, although there is some mold visible of some pieces of furniture and clothing, I was presented with no evidence by the tenants indicating that the mold necessitated the disposal of those items. It may have been less costly to try to remove or clean the mold from these items.
46. But finally, the tenants have presented no evidence, in the form of receipts or quotes, to allow me to make a determination of the replacement costs of these items.
47. For these reasons, the tenants' claim does not succeed.

**Decision**

48. The tenant's claim for compensation for damages does not succeed.

**Summary of Decision**

49. The tenants are entitled to the following:

- Refund of security deposit ..... \$750.00
- Compensation for Inconvenience ..... \$227.70
  
- Total Owing to Tenants ..... \$977.70

11 May 2020

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
John R. Cook  
Residential Tenancies Tribunal