

Residential Tenancies Tribunal

Decision 19-055-05

John. R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:10 am on 05 February 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 respondents, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively, also participated.

Issues before the Tribunal

3. The tenants are seeking an order for a refund of the security deposit in the amount of \$300.00 and a payment of utilities in the amount of \$1150.00.
4. The landlords are seeking an order for compensation for damages in the amount of \$2321.48, compensation for inconvenience in the amount of \$600.00 and authorization to keep 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 is section 17 of the *Residential Tenancies Act, 2000*, section 14 of the *Residential Tenancies Act, 2018* and Policy 9-3 Claims for Damage to Rental Premises.

Preliminary Matters

7. Landlord2, [REDACTED], was not listed as a respondent on the tenants' application and he was not served by the tenants with the claim and notice of the hearing. I amended the tenants' application to reflect the fact that [REDACTED] is a respondent to their application. [REDACTED] waived his right to proper notice and requested that the hearing proceed as scheduled.

Issue 1: Payment of utilities - \$1150.00

Relevant Submissions

The Tenants' Position

8. The landlords and tenants entered into a monthly rental agreement in June 2016. The agreed monthly rent was set at \$600.00 and the tenants were responsible for paying their own utilities. The tenants issued the landlords a termination notice on 30 November 2018 and they vacated the rental unit on 31 December 2018.
9. Tenant1 testified that when she was cleaning the unit prior to vacating, she cut the power to the unit in the panel box so she could clean the stove and the light fixtures. She stated that when she cut the electricity, the tenant in the upstairs' unit, her son, complained to her that the electricity to his rec room, which is also located in the basement, next to the rental unit, was also cut.
10. The tenants have since determined that since they had been living at the unit they had been paying for all of the electricity which was used in the basement portion of the house, including the rec room, even though that room belonged to the upstairs tenants.
11. Tenant1 stated that this rec room was being used as a game room by the upstairs' tenant's daughter and it contained a computer, an Xbox, a PlayStation, a TV, an electric fireplace as well as baseboard heaters and pot lights.
12. With their application the tenants submitted a copy of their billing history from Newfoundland Power showing the monthly charges they had incurred since they moved into the unit. The total charges come to \$3552.18. Tenant1 testified that she spoke to a representative of Newfoundland Power and she was informed by them that approximately 30% of the electricity they were charged for was actually used to supply power to the rec room.
13. The tenants are seeking a refund of \$1150.00 for the electricity they had paid for but which had been consumed by the upstairs tenants.

The Landlords' Position

14. Landlord1 stated that she did not know that the electricity for the rec room was being billed to the tenants until she was informed in December 2018. Landlord2 stated that they had purchased the house 7 years ago, "as is", and speculated that at one point, prior to the purchase of the house, the whole downstairs portion was a single, 2-bedroom, apartment and that sometime later one of the bedrooms got converted into a rec room for the upstairs unit without having the meters adjusted.
15. Landlord1 claimed that she still does not know whether the electricity for the rec room is on the meter for the basement apartment and claimed that she is waiting for an electrician to visit the unit to make a determination. Landlord2, however, conceded that the tenants were being charged for the electricity that was being used in the rec room and he agreed with the tenants that their panel box controlled the electricity in that room.
16. Both of the landlords denied, however, that the rec room was being used as a game room and claimed that it was rather used as a storage room. Landlord1 stated that she was in that rec room in August 2018 and claimed that it was full of the upstairs' tenants' personal belongings and that a mattress was leaning up against a wall. She testified that on that date she did not see a computer, TV, PlayStation, Xbox or fireplace in that room.
17. Landlord2 claimed that the room was approximately 10 x 12 feet in size and he argued that a room that size would not use 30% of the electrical costs the tenants were billed each month.

Analysis

18. Based on the testimony of the tenants and landlord2, I find it probable that the tenants were billed for the costs of electricity used in the rec room. I also agree with the tenants that since they were not renting that rec room they are entitled to a rebate of the costs that they had been charged for the electricity that was being used in that room during their tenancy.
19. Landlord2 testified that the rec room measured approximately 10 x 12 feet and that the whole rental unit measured 30 x 40 feet, meaning that the floor space of the rec room was roughly 10% the size of the whole basement area. Accordingly, I find that the tenants are therefore entitled to a refund of 10% of the costs of electricity use for the basement portion of the complex: \$355.29 (10% x \$3552.18)

Decision

20. The tenants' claim for a payment of utilities succeeds in the amount of \$355.29

Issue 2: Compensation for Damages – \$2321.48

Relevant Submissions

The Landlords' Position

21. Landlord2 stated that he visited the unit in late 2018 to do some maintenance at the property. He testified that when he entered the unit he discovered tenant2 standing at the kitchen sink with a lit cigarette in his hand next to an open window. Landlord2 stated that he pointed out to tenant2 at that time that the apartment was a non-smoking unit and asked if tenant2 had always been smoking indoors. Landlord2 testified that he was informed by tenant2 that he would have an occasional cigarette in the rental unit.
22. Landlord1 stated that after they regained possession of the rented premises they noted that there was a strong odour of cigarette smoke in the unit. Landlord1 claimed that the odour was in fact so bad that she had an asthma attack and in support of that claim she submitted a note from her doctor indicating that landord1 has “ongoing issues with allergic asthma”.
23. In order to try to rid the unit of the smell of cigarettes, the landlords were required to wash down all the surfaces in the rental unit. Landlord1 claimed that the walls in the rental unit were clean, but complained that other surfaces that were not within easy reach were very dirty and covered in nicotine. In support of that claim landlord1 submitted photographs at the hearing showing the sides of the refrigerator, a door, a doorbell box, and the underside of the range hood. She pointed out that these photographs show that these items are coated in nicotine and other photographs show dirt on the cloths she used during cleaning. Landlord1 also submitted into evidence 2 window screens and a set of blinds and pointed out that these were also yellowed with nicotine.
24. Besides the cleaning of surfaces in the unit to remove the nicotine, landlord1 also submitted photographs showing that the floors underneath and behind the appliances were not clean and that there was dirt along the side of the stove.
25. Despite the fact that they had washed down the surfaces of the rental unit, landlord1 claimed that the smell of smoke remained at the unit and they were therefore required to repaint the unit. Both of the landlords stated that the rental unit had been last painted 5 years ago.
26. With respect to the costs they are seeking, the landlords submitted with their application a breakdown of the hours they had spent at the unit cleaning and painting. According to that document, they spent 107 hours carrying out that work and they are seeking \$2086.50 in compensation for their personal labour. They also submitted a receipt showing that they were charged \$234.98 for painting supplies.

The Tenants' Position

27. Tenant2 denied that he had been smoking in the unit during their tenancy and insisted that he would always smoke outdoors. He acknowledged that landlord2 had found him in the unit with a cigarette on the day that he described, but he claimed that he was fully aware that the landlord was on his way to the rental unit and he claimed that he had merely walked inside with the lit cigarette to retrieve a cup of tea he had left on the kitchen counter.
28. Tenant2 also denied that the unit required cleaning and tenant1 submitted photographs at the hearing showing the condition of the unit on the day they had vacated. Landlord2 pointed out that there is no dirt visible in these photographs and suggested that some of the photographs submitted by the landlords were of a different apartment.
29. Regarding the painting, tenant2 stated that he had painted the unit himself after he had moved in and claimed that it only took him 17 hours to do the whole unit and he only required 1.5 gallons of paint. He argued that it would not take 107 hours to clean and paint a small, 1-bedroom apartment and he also argued that the landlords would not need to use 5 gallons of paint for the walls and 3 gallons of paint for the ceilings.

Analysis

30. With respect to the cleaning, the photographs submitted by the tenants do show that the unit was clean when they vacated but these photographs do not show the areas behind the appliances in the kitchen. The landlords' photographs show that these areas had not been adequately cleaned. I find that the landlords are entitled to compensation for 4 hours of their labour to clean these areas: \$76.60 (4 hours x \$19.15 per hour).
31. With respect to the issue of smoking, the evidence submitted at the hearing was that there was at least one occasion where landlord2 found tenant2 smoking in the unit and I find it probable that this was not an isolated incident.
32. The photographic evidence submitted by the landlords also shows that there is a brown/orange coloured residue on some surfaces and that some of the white fixtures in the unit had become yellow during the course of the tenancy. Based on this evidence and based on the testimony of each of the landlords, I find it probable that there was an odour of cigarettes in the unit and that repainting was necessary.
33. I agree with the tenants, however, that it would not take 107 hours to clean and paint a 1 bedroom apartment. Based on my experience in adjudicating claims of a similar sort, and based on the description of the apartment provided at the hearing, I find that it should not take more than 20 hours to paint the apartment.

34. In awarding costs for painting, however, depreciation must also be taken into account. Landlords are expected to repaint a rental unit every 3 to 5 years as a result of normal wear and tear through successive tenancies. The landlords last painted the rental unit 5 years ago and tenant2 stated that he repainted the unit himself 2 years ago. Accordingly, I find that the rental unit would likely have had to be repainted in another year or so anyway and I therefore find that they are entitled to a depreciated award of \$205.79 (\$234.38 for materials, \$383.00 in labour (\$19.15 per hour x 20 hours) x 1/3 depreciation).

Decision

35. The landlords' claim for compensation for damages succeeds in the amount of \$282.39 (\$76.60 for cleaning and \$205.79 for painting).

Issue 2: Compensation for inconvenience – \$600.00

Relevant Submissions

The Landlords' Position

36. Landlord2 stated that after the tenants gave them notice that they were vacating the unit he listed the unit for rent on NL Classifieds and Kijiji on 01 December 2018. He also stated that he had placed a "For Rent" sign in the window of the rental unit.
37. Landlord1 claimed that because the unit smelled of cigarette smoke, she was unable to rent the unit and it is still vacant. She claimed that she had no viewings of the property during the month of December 2018, when the tenants still resided there, and that the first viewing did not take place until 01 February 2019.
38. The landlords are seeking a payment of \$600.00 in compensation for the loss of rental income they suffered during the month of January 2019.

The Tenants' Position

39. Tenant2 denied that he smoked inside the rental unit and he argued that the apartment did not need to be repainted.

Analysis

40. I was not persuaded by this portion of the landlords' claim and I find that the landlords have not established that the rental unit was not rented during January 2019 because the unit smelled of smoke, as they claimed.

41. According to the testimony provided at the hearing, the tenants provided the landlords with a termination notice that met the requirements of the *Residential Tenancies Act, 2000*. Tenants in this province are required, in month-to-month tenancies, to provide at least 1 month's notice that they are terminating their rental agreement. Notice was given around 30 November or 01 December 2018 and the tenants vacated on 31 December 2018.
42. In a situation where a landlord is unable to re-rent the unit after the tenants have given proper notice, the tenants cannot be held liable for any loss of rental income, unless the unit was unable to be re-rented because of something the tenants had done.
43. However, in this case, although I agree with the landlords that there was smell of smoke in the unit and that it needed to be repainted, it was not established that this fact contributed to the landlords' inability to rent the unit for January 2019. They had been advertising it since 01 December 2018 and they had no viewings of the unit during December 2018 or January 2019. There was no evidence presented at the hearing to establish that the complete lack of interest in the unit had anything to do with the smell of smoke and I find that even if the tenants had not caused any smoke damage to the unit the landlords still would not have had the unit re-rented for January 2019 and would have suffered a loss of rental income for that month anyhow.

Decision

44. The landlords' claim for compensation for inconvenience does not succeed.

Issue 4: Security Deposit – \$300.00

Analysis and Decision

45. Tenant1 submitted a receipt showing that the tenants had paid a security deposit of \$300.00 on 01 June 2016. As the landlord's claim for compensation for damages has succeeded, they shall retain \$282.39 of that deposit and refund the remaining \$17.61 to the tenants.

Issue 5: Hearing Expenses

Analysis and Decision

46. As the tenants' claim has been successful, the landlords shall pay the tenants hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

47. The tenants are entitled to the following:

- a) Payment of Utilities\$355.29
- b) Refund of Security Deposit.....\$300.00
- c) Hearing Expenses.....\$20.00
- d) LESS: Compensation for Damages (\$282.39)
- e) Total Owing to Tenants\$392.90

25 February 2019

Date


John R. Cook
Residential Tenancies Tribunal