

Residential Tenancies Tribunal

Decision 19-005-02

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:45 am on 02 April 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”, participated in the hearing. The respondent, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”. A letter of authorization is on file.

Issues before the Tribunal

3. The tenant is seeking the following:
 - An order for a refund of the security deposit in the amount of \$200.00
4. The landlord is seeking the following:
 - The determination of the validity of a termination notice,
 - Authorization to retain the \$450.00 security deposit,
 - An order for a payment of rent in the amount of \$450.00,
 - An order for compensation for damages in the amount of \$315.25,
 - An order for compensation for inconvenience in the amount of \$100.00, and
 - An order for \$180.00 for the costs of cleaning the rented premises.

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 10, 18, 34 and 47 of the *Residential Tenancies Act, 2018* and Policy 9-3 Claims for Damage to Rental Premises.

Preliminary Matters

7. The tenant called [REDACTED] as a witness.
8. The landlord called [REDACTED] as a witness. He attended by teleconference.

Issue 1: Validity of Termination Notice

Issue 2: Rent - \$450.00

Relevant Submissions

The Landlord's Position

9. The landlord stated that she had entered into 1-year, fixed-term rental agreement with the tenant on 01 November 2018 and a copy of the executed lease was submitted at the hearing (ND #1). The agreed rent was set at \$900.00 per month and the tenant had paid a security deposit of \$450.00.
10. The landlord stated that on 05 January 2019 the tenant sent a text-message to the landlord (ND #2) complaining about his neighbour on the adjoining property. In that text-message, the tenant asks that the landlord allow him to opt out of his lease and on 09 January 2019 the tenant sent another message to the landlord (ND #3) informing her that he was giving her his notice. In other messages sent that day (ND #4) the tenant writes that he is giving the landlord a 1-month notice and the landlord writes that she will start to advertise the unit for 01 March 2019.
11. Later that same day, the tenant informs the landlord that he has found a new apartment and that he will be leaving by the end of January 2019 (ND #5). The landlord stated that she received the keys from the tenant on 31 January 2019.
12. The landlord testified that after she had received the notice from the tenant on 09 January 2019 she began advertising the rental unit and she stated that she was able to secure new tenants for February 2019 and she testified that she received a payment of rent for that month.
13. The landlord argued that the termination notice that the tenant had given her was not a proper notice and she is seeking a payment of \$450.00 in rent in lieu of proper notice.

The Tenant's Position

14. The tenant reiterated the landlord's claim that he had been having problems with his neighbour and he claimed that he could not continue to reside at the property and he had to move before things between him and his neighbour escalated.
15. He stated that he had an agreement with the landlord that he could move out of the rental unit at the end of January 2019 and he claimed that he had returned the keys to her on 26 January 2019.
16. The tenant pointed out that the landlord did not object at the time that she did not receive proper notice and he argued that the landlord is not entitled to any rent for February 2019 as she was able to put new tenants in place for that month.

Analysis

17. Section 18 of the *Residential Tenancies Act, 2018* outlines the notice requirements tenants are to abide by when terminating rental agreements and the relevant sections state:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

...

(c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.

...

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

(a) be signed by the person providing the notice;

(b) be given not later than the first day of a rental period;

(c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and

(d) be served in accordance with section 35.

and section 34 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.*

18. The tenant's notice to the landlord is deficient in many ways: it is not in the form prescribed by the minister, it did not contain the landlord's address or the address of the rented premises and it did not state the section of the *Act* under which it was given. Furthermore, in this fixed-term lease, the earliest termination date the tenant could have specified would have been 31 October 2019. For these reasons, the notice is not valid.
19. However, although the notice was invalid, the landlord did not suffer any loss of rental income. She mitigated her damages, as required, by advertising the unit right away and she was able to secure new tenants for February 2019. As such, her claim for rent does not succeed.

Decision

20. The termination notice issued to the landlord on 09 January 2019 is not a valid notice.
21. The landlord's claim for a payment of rent does not succeed.

Issue 3: Compensation for Damages – \$315.25

Relevant Submissions

The Landlords' Position

22. The landlord stated that after the tenant moved out she carried out a walkthrough of the rental unit and she discovered that the tenant had caused some damages to the unit and it had not been cleaned. With her application, she provided the following breakdown of the costs to carry out repairs to the rental unit (ND #6):
- Replace baseboard \$9.76
 - Replace closet door..... \$55.49

- Repair driveway..... \$356.50
- Remove garbage in basement \$172.50
- Total \$594.25

Baseboard

23. The landlord submitted a photograph at the hearing (ND #7) showing the baseboard in the rear bedroom and she pointed out that there was a chip in it. She claimed that the baseboard was newly installed when the tenant moved in and she claimed that this chip was not there at that time. The landlord submitted a quote at the hearing (ND #8), dated 01 April 2019, showing that a replacement baseboard would cost \$9.99 + tax. She stated that she has placed an order for that baseboard but it has not yet been installed.

Closet Door

24. The landlord submitted a photograph (ND #7) showing the closet door in the front bedroom and she pointed out that there was a notch taken out of the inside, top of this door. The landlord claimed that this door was newly installed just before the tenant moved in and it was not damaged. Her witness, [REDACTED], testified that he carried out renovations at the unit before this tenancy began and he corroborated the landlord’s claim that these doors were new and undamaged. The landlord is seeking the costs to have the door replaced and she submitted a quote at the hearing (ND #8) showing that a replacement door would cost \$52.99 + tax.

Repair Driveway

25. The landlord submitted a photograph showing the driveway at the rental unit after the tenant had moved out (ND #9) and she pointed out that there were ruts in that driveway where the tenant had parked his truck. The landlord stated that this driveway is made up of stone and dirt but she claimed that although her previous tenants had parked their trucks in the same spot, she never had a problem with ruts like those identified in the photograph. The landlord stated that the driveway has not yet been repaired, but she submitted a quote at the hearing (ND #10), dated 01 April 2019, showing that it would cost \$310.00 + tax to have a load of Class “A” delivered to the unit and then spread over the damaged areas.

Remove Garbage

26. The landlord submitted 2 photographs at the hearing showing that the tenant had left behind some garbage at the rental unit (ND #11). She stated that she removed some of that garbage herself and that she had also hired a trucking company to remove the rest. The landlord stated that it took her 2 hours to remove a portion of the garbage and she submitted a quote at the hearing (ND

#12) showing that she would be charged \$172.50 to have the garbage removed by the trucking company. She testified that she was “probably” charged \$90.00 but no receipt was submitted at the hearing.

The Tenant’s Position

Baseboard

27. The tenant stated that he was unaware of any chip in the baseboard and he stated that it may have been there when he moved in or maybe it was damaged by the landlord’s new tenants. He also complained that the landlord is making a claim for repairs which have not been carried out and he suggested that this work might never be done.

Closet Door

28. The tenant stated that he was unaware of any damage on this door and he denied that he was responsible. He stated that this damage may have been caused before he moved in or after he had moved out. He also claimed that this matter was not raised with him until after he had served the landlord with his application.

Repair Driveway

29. The tenant acknowledged that he had parked his car in the driveway and pointed out that there was no where else for him to park. He stated that the damage was not intentional and was just caused by him parking in that designated spot. He pointed out that the driveway is composed of soft mud and clay and suggested a wheelbarrow would sink in it. The tenant stated that this issue was not raised with him until after he had served the landlord with his application. He also claimed that the quote is inflated and stated that a load of Class “A” would cost between \$80.00 and \$100.00 per load.

Remove Garbage

30. The tenant acknowledged that he had left behind those items shown in the landlord’s photographs. He pointed out, however, that the garbage merely consisted of 2 piles of cardboard boxes and it easily could have been broken down, bagged and left for the weekly garbage collection day. He claimed that there was no need to have a trucking company remove the boxes and he argued that for the amount of boxes shown in the photographs the amount the landlord was quoted was excessive.

Analysis

31. 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;

32. There is no report of an incoming or outgoing inspection and, as such, I find that the landlord has failed to establish that the damage was caused to the baseboard and closet door occurred during this tenancy. In any case, the damage seems minor and I was not convinced that the landlord needs to replace these items. Accordingly, her claim for those 2 items does not succeed.

33. Regarding the ruts in the driveway, I find that this damage was probably caused during this tenancy, but in this case I was not persuaded that the damage was caused by any deliberate or negligent act on the part of tenant. It was the tenant's testimony that he was using the driveway in a normal way and I find it likely that the ruts developed because of the material the driveway was made out and not because of anything the tenant had done.
34. The tenant admits that he had left the garbage in the basement and I therefore find that the landlord is entitled to an award to have it removed. On inspection of her submitted photographs, I agree with the tenant that the bulk of this garbage consisted of cardboard boxes. For the amount of garbage shown in the photographs, I find that the landlord is entitled compensation for 3 hours of her labour to remove the garbage and take it to the dump. Policy with this Section is that an applicant may claim \$19.40 per hour for their personal labour and the landlord's claim therefore succeeds in the amount of \$58.20.

Decision

35. The landlord's claim for compensation for damages succeeds in the amount of \$58.20.

Issue 4: Cleaning - \$180.00

Relevant Submissions

The Landlord's Position

36. The landlord stated that the entire house had to be cleaned after the tenant moved out and at the hearing she submitted photographs taken before she had cleaned and photographs showing the unit after the cleaning had been completed (ND ##13-23).
37. She pointed out that handle on the refrigerator door was dirty and there were some food particles found in the fridge and freezer. She pointed out that the oven was dirty and in the bathroom a soap ring was visible where the tenant had placed his shampoo bottle. She also complained that there were cigarette ashes in the toilet. Other photographs show that there was dirt on some baseboards and walls and fingerprints on doors.
38. The landlord stated that it took her 9 hours to clean the apartment and she is seeking \$180.00 in compensation for her labour. She also submitted a receipt at the hearing showing that she had paid \$26.76 in cleaning supplies.

The Tenant's Position

39. The tenant submitted photographs at the hearing showing the condition of the unit after he had vacated (GC ##1-16). The tenant stated that the unit was thoroughly cleaned by his mother, [REDACTED], before he vacated the unit. He called her as a witness.
40. [REDACTED] stated that swept and mopped all the floors in the unit and she did that after each room was emptied by the movers. She also testified that she had cleaned out the cupboards and the refrigerator and had wiped out the cupboards. [REDACTED] testified that the unit was clean after the tenant vacated.
41. On questioning from the landlord, [REDACTED] acknowledged that she had not cleaned out the stove and, besides the floors, that she had not cleaned the toilet or bathtub in the bathroom.

Analysis

42. The tenant's photographs do show that the unit was left in a clean condition after the tenant moved out and his claim that the unit was thoroughly cleaned was, for the most part, corroborated by [REDACTED].
43. The landlord's photographs, though, do show that some cleaning was overlooked and this was admitted to by [REDACTED]. The oven was not cleaned and there was some residue visible in the bathtub. There were also a few crumbs in the refrigerator and some baseboards and doors were left dirty.
44. Based on the photographs submitted at the hearing, I find that the landlord is entitled to compensation in the amount of \$58.20 for 3 hours of her personal labour and \$26.76 for cleaning supplies.

Decision

45. The landlord's claim for costs of cleaning succeeds in the amount of \$84.96.

Issue 5: Security Deposit

46. The tenant paid a security deposit of \$450.00 on 01 November 2018 and receipt of that deposit is acknowledged in the submitted lease.
47. After the tenant moved out the landlord returned \$250.00 of that deposit and retained \$200.00 in compensation for damages and the costs of cleaning.
48. The tenant is seeking to have the remaining \$200.00 returned to him.

Analysis and Decision

49. As the landlord’s claim for compensation for damages and the costs of cleaning has been successful, she shall retain \$143.16 of the \$200.00 security deposit she is holding and return the remaining \$56.84 to the tenant.

Issue 6: Hearing Expenses

50. As both claims have been partly successful, the parties shall pay their own hearing expenses.


Summary of Decision

51. The tenant is entitled to the following:

- a) Refund of Security Deposit.....\$200.00
- b) LESS: Compensation for Damages (\$58.20)
- c) LESS: Cleaning Costs..... (\$84.96)
- d) Total Owing to Tenant.....\$56.84

14 June 2019

Date


John R. Cook
Residential Tenancies Tribunal