

Residential Tenancies Tribunal

Decision 19-0010-02

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on 21 May 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing system.
2. The applicant, [REDACTED], did not participate in the hearing and was represented by MD Property Management – [REDACTED] – *Affirmed*, hereafter referred to as landlord.
3. The respondent, [REDACTED], hereafter referred to as the tenant participated in the hearing – *Affirmed*.
4. The details of the claim were presented as a written fixed term rental agreement with rent set at \$1500.00 per month (utilities extra), due on the 1st of each month and set to expire on 14 December 2019. It was stated that there was a security deposit in the amount of \$500.00 collected on the tenancy on or about 10 December 2018. The tenant issued a termination notice dated 04 February 2019 by way of email for the intended termination date of 15 March 2019 with no particular section of the *Residential Tenancies Act, 2018* stated.
5. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The claim was amended to update the current mailing address of the tenant which will be reflected on the attached Order.
7. The landlord removed the request for management fees of \$500.00 as this is considered a cost of doing business and a contractual obligation unrelated to the tenant.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Rent Owing **\$3000.00**
 - b) Compensation for damages **\$1500.00**
 - c) Hearing expenses
 - d) Application of Security Deposit **\$500.00**

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
10. Also relevant and considered in this case are Sections 19, 34, 35 and 42 of *the Act*; and Policy 9-3: *Claims for Damages to Rented Premises*, Policy 9-5: *Life Expectancy of Property* Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Compensation for Damages - \$1000.00

Relevant Submissions

Landlord Position

11. The landlord testified that the tenant was not in the property but was visiting in Gander when a flood happened in the property.

12. The landlord is claiming for two specific items as it relates to the damages as follows:
 - a. Recover the insurance deductible Re: Damages to Kitchen and Living Room **(\$1000.00)**
 - b. Payment of the Property Management Fee **(\$500.00)**
13. The landlord testified that she was advised that the tenant was visiting in Gander the week prior to March 8, 2019. The landlord was advised by the tenant on March 8, 2019 that she arrived home to find that the home was flooded in the kitchen and living room as a result of the Jacuzzi tub overflowing from upstairs.
14. The landlord testified that the tenant offered a theory of how the tub overflowed stating that her cat somehow turned on the water and knocked a face cloth into the drain causing the tub to fill and overflow.
15. The landlord testified that the insurance claim looked after the repairs with Belfor Restoration doing the work. Clean-up took 3 days and the repairs took 3 weeks. The landlord stated that the tenant remained in the unit for 3-4 days before she moved as she had nowhere to go.
16. The landlord submitted into evidence photos of the damages to the property **(Exhibit L # 4)** which clearly shows extensive damage to the kitchen and living room areas of the property. There were no estimates from the insurance claim provided to show the valuation of the costs for the required repairs. Additionally, there were no documents or evidence of a deductible that was paid or required to be paid.
17. The landlord is seeking reimbursement for the \$1000.00 deductible.

Tenant Position

18. The tenant testified that she was in Gander visiting beginning March 4, 2019 and had her ex-husband checking on the property. The tenant testified that on or about March 6, 2019 her ex-husband visited the property to check on the pet and claims that everything was fine. She stated that she returned home on March 8, 2019 to find the flood. The tenant indicated that when the flood was discovered, the water was trickling in the tub.
19. The tenant stated she has no idea what happened but couldn't figure out why the overflow drain in the tub didn't take care of the water. The tenant submitted into evidence an email dated 18 April 2019 **(Exhibit T # 3)** which she stated was sent to the landlord on 23 January 2019. The landlord confirmed receipt of this email on 23 January 2019 and stated that corrections were made 25 January 2019.
20. The tenant went on to add that as a result of the flood, she feels that the property

is no longer habitable and submitted into evidence a safety data sheet (**Exhibit T # 4**) respecting sheetrock along with an internet blog (www.sylvane.com/blog/) (**Exhibit T # 5**) concerning the potential hazards to health of construction sites.

Analysis

21. The relationship between the landlord and tenant was evident at the scheduled hearing. It is clear that the relationship started out as a cordial landlord/tenant relationship and appears to have gone off the rails at some point during the tenancy, perhaps because the landlord had placed the property for sale once she was aware the tenant could not purchase the property.
22. There is no dispute between the parties that a flood occurred. The flood is also evident from the photos presented. The dispute is related to liability. The tenant feels that she is not responsible as she was not at home at the time of the flood.
23. Liability in this case arises for the question, did the tenant take reasonable care to prevent the event, and in this case was the flood. The landlord is not certain how the flood occurred. The tenant has offered a theory that her cat must have accidentally turned on the faucet (lever style) and knocking a face cloth into the tub.
24. The landlord engaged the insurance company which holds the insurance policy on the property. It is not clear if the tenant had an insurance policy for contents and liability insurance.
25. From previous experience, in dealing with these claims and personal experience, it is normal for a landlord's insurance to cover damages to the property if it cannot be determined that a third party was liable for the damages. I can reasonably infer that because the landlord's insurance covered the repairs, that there were not reasonable grounds to determine liability of a third party.
26. The tenant's theory that her cat must have leaned on the lever style faucets turning them on, whereas it seems far-fetched, is actually quite plausible. The tenant took a reasonable and required step to have someone attend to the property while she was away for an extended period. There is no possible way that the tenant could have reasonably seen that her cat would turn on the water.
27. As there was no reasonable way for the tenant to prevent or see that this damage could have occurred, then liability as a result of a negligent action cannot be inferred. As such, the landlords' claim for reimbursement of the insurance deductible fails.

Decision

28. The landlord's claim for damages (reimbursement of insurance deductible) fails.

Issue 2: Rent Owing - \$3000.00

Relevant Submissions

Landlord Position

29. The landlord stated that the parties entered into a fixed term rental agreement (**Exhibit L # 5**) which was to expire on 14 December 2019. The landlord stated that it was the intention of the tenant to purchase the property but once she attempted to secure a mortgage from the bank, was not able to secure enough of a mortgage to purchase the unit. The tenant advised the landlord that it was fine to place the house back on the market (**Exhibit L # 2**) in an undated series of text messages. The landlord stated that she received an email from the tenant on 04 Feb 2019 (**Exhibit L # 1**) that she would be vacating the property before March 15, 2019. The landlord testified that she attempted to re-rent the property immediately (**Exhibit L # 3**) by posting its availability on 06 February 2019 with an availability date of 15 March 2019. The landlord is seeking rent for the period of 15 March 2019 to 14 May 2019 in the amount of \$3000.00.

Tenant Position

30. The tenant testified that she does not feel she is responsible for the rent as the property was not habitable because of the flood from the tub. The tenant testified that she was not in the property when the tub overflowed and that she can only assume that her cat started the water causing the flood. She added she is not sure what happened. She testified that she vacated the property on or about 14 March 2019.

Analysis

31. I have reviewed the testimony and evidence of the landlord and tenant in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) does the tenant owe rent for the period 15 March 2019 to 14 May 2019.
32. In analyzing the evidence and statements presented at the hearing, it was agreed by both parties that there was a fixed term rental agreement established. We also know that the tenant did send a termination notice to the landlord via email on or about 04 February 2019 indicating that she would be moved before 15 March 2019. I will examine the Notice first.

33. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 19(4), 18(1)(c), 18(9) and 34 as well as the service requirements identified in section 35. The delivery of the notice via email is an acceptable form of service as identified in section 35. The email notice itself is missing some requirements as set out in the *Act*. The time frame as required in section 18(1) is not the last 2 months of the rental agreement as required and as well the notification does not identify the specific section of the *Act* that the notice is being issued under as required in section 34. With this in mind I find that the notice does not meet the technical requirements as set out in the *Residential Tenancies Act, 2018* and as such would not be considered a valid notice.
34. Beyond the notice the tenant argues that she should not be held responsible for the rent beyond the date she left as the property was not habitable. In this regard the evidence is clear that a water event happened between 06 March 2019 and 08 March 2019 while the tenant was in Gander, NL. The tenant has offered several possibilities that the flood happened as a result of (1) possibly her cat turning on the water, (2) or nonfunctioning drain pipes. The determination of the liability for damages has been determined above and that the tenant was not negligent and as such, not liable for the event. The question now reverts to was the property habitable. The landlord testified that clean-up took 3 days and the repairs took 3 weeks and were completed by the property restoration company. The tenant has supplied some internet blog information concerning the general safety of construction sites as it relates to drywall. From the **Exhibit T # 5**, I refer to page 2 in the middle of the page and I quote *“While there have been concerns about contaminated drywall emitting sulfurous gases, there is little evidence to show that uncontaminated drywall is linked to serious health risks.”* Drywall is a common construction material used worldwide in both commercial and residential usage. I also refer to the **Exhibit T # 4** (safety data sheet) and in particular under section 2 of the sheet which identifies the hazards. This section identifies no physical, health or OSHA defined hazards. There has been no direct evidence to suggest that the property was not habitable or that the site was a particular safety concern out of the ordinary. With respect to the habitability, I find that the tenant has not established that the unit was not habitable.
35. There was certainly some repairs to be made and as of the hearing date (21 May 2019) the landlord has not secured a new tenant. The landlord has mitigated as can be reasonably done so since 06 February 2019 and beyond the repairs without renting the unit. The responsibility of the unit is that of the tenant, as she was in a fixed term rental agreement which didn't expire until 14 December 2019. As such, I find that the tenant is responsible for the lease agreement. Further, I find that for the three weeks that repairs were underway, I find that the tenant would not have been able to use the complete property and as such is entitled to a rebate of the normal rent for this period.

36. In finding that the tenant was responsible for the rental agreement less a reduction for the 3 weeks of repairs, I make the award below:

- a. Rent Owing for Period - **\$3000.00**
- b. LESS: reduction for repairs – **(\$1035.72)****
- c. Total Owing for rent claimed - **\$1964.28**

****** ($\$1500.00 \times 12 = \$18,000 \div 365 = \$49.32 \times 21 \text{ days} = \1035.72)

Decision

37. The landlord's claim for rent is successful in the amount of \$1964.28.

Issue 3: Hearing Expenses

Landlord Position

38. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (**Exhibit L # 6**). The landlord is seeking these costs.

Analysis

39. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlords are considered a reasonable expense and are provided for with in Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*. As such, I find the tenant is responsible to cover these reasonable expenses.

Decision

40. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00.

Issue 4: Refund of Security Deposit

Landlord Position

41. The landlord testified that a security deposit in the amount of \$500.00 was collected on the tenancy on or about 15 March 2019. The landlord is seeking that this deposit be applied against any order derived from this application and claim.

Tenant Position

42. The tenant did not make any application seeking the refund of the deposit.

Analysis

43. I have reviewed the testimony and evidence of the landlord and tenant in this matter. Both parties have acknowledged that a security deposit in the amount of \$500.00 was paid by the tenant and there is a decision in favor of the landlord. It is reasonable for the landlord to offset any amount owing by the tenant.

Decision

44. The landlord's claim to offset the security deposit against an amount owing is successful.

Summary of Decision

45. The landlord is entitled to the following:

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|----|--------------------------------------|--------------------------|
| a) | Rent Owing | \$1964.28 |
| b) | Compensation for Damages | 0.00 |
| c) | Hearing Expenses | <u>\$20.00</u> |
| d) | Sub-total | \$1984.28 |
| e) | LESS: Security Deposit | <u>(\$500.00)</u> |
| f) | Total Owing to Landlord | <u>\$1484.28</u> |

15 January 2020

Date



Michael Greene
Residential Tenancies Tribunal