

Residential Tenancies Tribunal

Decision 19-075-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am on 28 February 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, participated by teleconference.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$134.06
 - An order for compensation for cleaning costs in the amount of \$340.00;
 - An order for a payment of utilities in the amount of \$673.75;
 - An order for a payment of rent in the amount of \$2550.00;
 - An order for compensation for “other” expenses totalling \$169.33; and
 - Authorization to retain the security deposit of \$925.00.

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 decision section 15 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Cleaning - \$340.00

Relevant Submissions

The Landlord's Position

6. The landlord and tenant entered into a 1-year, fixed-term rental agreement on 01 March 2015 and a copy of the executed lease was submitted at the hearing (JS #1). The agreed rent was set at \$1300.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$925.00.
7. The landlord stated that the tenant informed her on 02 September 2018 that she was terminating her agreement and she vacated on 01 October 2018.
8. When the tenancy began in 2015 the landlord and the tenant conducted a walkthrough of the rental unit and a copy of a rental premises condition report was submitted at the hearing (JS #2). On 01 October 2018 the landlord was out of town and in her stead, the landlord's daughter carried out an inspection with the tenant. The outgoing portion of the inspection report was not completed after that inspection.
9. The landlord stated that the whole unit needed to be cleaned after the tenant moved out. She stated that all the floors in the unit were dirty as were the carpets on the stairs. She stated that there was garbage found behind the refrigerator and there was food left in a freezer. She also claimed that all the countertops needed to be washed down. In support of her claim, the landlord submitted photographs at the hearing (JS #3, #4) showing that the side of the refrigerator was dirty and that there was garbage left behind it, that the inside of a freezer was dirty and that a floor was unswept.
10. The landlord testified that she had hired cleaners at a cost of \$340.00 for 17 hours of cleaning. In support of that claim she submitted a copy of a text-message from the cleaner (JS #5) in which she recounts the time she spent cleaning and she also submitted a copy of the INTERAC e-Transfer e-mail receipt showing that she had paid the cleaner \$340.00.

The Tenants' Position

11. The tenant stated that she had thoroughly cleaned the unit before she moved out and she testified that there was no discussion about cleanliness during the outgoing walkthrough. She stated that the only issue on that date was some garbage the landlord's daughter found behind the dryer, but she removed that garbage when the walkthrough was completed.

12. The tenant also complained that the unit was “filthy” when she moved into it and she had to spend several days cleaning at the beginning of her tenancy. She also stated that when she did the incoming inspection, she did not examine the areas behind the dryer and refrigerator and she argued that the items found in those areas after she moved out might have been from an earlier tenancy.

Analysis

13. The burden of proof lies with the landlord to establish, on the balance of probabilities, that the tenant had not cleaned the unit before she vacated and that the landlord was required to pay for 17 hours of cleaning.
14. The photographic evidence submitted by the landlord does show that there was some debris in the area behind the refrigerator, that the side of the refrigerator was dirty and that the inside of the freezer was dirty. To clean those items shown in these photographs, I find that the landlord is entitled to compensation for 2 hours of her personal labour: \$38.30 (\$19.15 per hour x 2 hours).
15. No other evidence was submitted at the hearing to convince me that the landlord is entitled to any additional compensation.

Decision

16. The landlords’ claim for compensation for cleaning costs succeeds in the amount of \$38.30.

Issue 2: “Other” Expenses – \$169.33

Relevant Submissions

The Landlord’s Position

Garbage Removal

17. The landlord submitted photographs at the hearing (JS #4) showing that there was some garbage left both inside and outside of the rental unit—this garbage included children’s toys, an old carpet, beer cans and garbage bags. The landlord also stated that she was required to dispose of some Styrofoam and black chairs.
18. The landlord testified that it took her 5 hours to remove this garbage and take it to the dump. She is seeking \$95.75 in compensation for 5 hours of her personal labour (\$19.15 per hour x 5 hours).

Broken refrigerator parts

19. The landlord stated that after the tenant moved out she discovered that 2 of the refrigerator shelves were damaged and had to be replaced. She submitted a receipt (JS #9) showing that she had replaced the shelves at a cost of \$73.58.
20. The landlord testified that the refrigerator was 10 years old when the tenancy ended and she stated that as far as she could recall it was in "ok shape" when the tenant moved in. She pointed out that no deficiencies were noted in the condition report.

The Tenant's Position

Garbage Removal

21. The tenant acknowledged that she had left behind some garbage at the rental unit but she claimed that it was only left behind on the date she vacated because it was not yet garbage day.
22. She stated that when she did the walkthrough with the landlord's daughter, this garbage was pointed out to her but she complained that she was denied the opportunity to return to the unit and remove it.
23. Regarding the black chairs, the tenant claimed that these chairs were found in the shed when she first moved into the unit.

Broken refrigerator parts

24. With respect to the refrigerator, the tenant claimed that it was already broken when she moved into the unit and she claimed that she was required to tape the shelves so they could be used during her tenancy.

Analysis

25. The evidence submitted by the landlord clearly shows that there was some garbage left behind at the unit after the tenant moved out. I find that compensation for 5 hours of the landlord's labour to collect the garbage and bring it to the dump is a fair award. As such, her claim succeeds in the amount of \$95.75 (5 hours x \$19.15 per hour).
26. Regarding the refrigerator shelves, it was not disputed that these shelves were damaged when the tenancy ended and given that there was no indication in the inspection report that there was any damage to the refrigerator when the tenant moved in, I find it probable that this damage occurred during this tenancy. Depreciation must be taken into account when making an award for damages, and given that a refrigerator has an expected life span of 12 years, I find that the landlord is entitled to an award of \$12.26 ($\$73.58 \div 12 \text{ years} = \$6.13 \text{ per year} \times 2 \text{ years remaining in lifespan} = \12.26).

Decision

27. The landlord's claim for compensation for "other expenses" succeeds in the amount of \$108.01 (\$95.75 + \$12.26).

Issue 3: Compensation for Damages – \$134.06

Relevant Submissions

The Landlord's Position

28. The landlord submitted photographs at the hearing (JS #3) showing that the tenant had painted a mural on one of the walls in the rental unit and she had painted a chalk-board on another wall. She testified that the tenant had not asked her for permission to paint these walls.
29. The landlord testified that she repainted these 2 walls with 3 coats of primer and 3 coats of paint. She submitted 2 receipts at the hearing (JS #7, #8) showing that she had paid a total of \$134.06 for paint and primer.
30. The landlord stated that these walls were last painted about 3 years before the tenancy began.

The Tenant's Position

31. The tenant acknowledged that she had painted these walls without the landlord's permission and she did not dispute this portion of the landlord's claim.

Analysis and Decision

32. As the tenant did not contest the landlord's claim, her claim succeeds in the amount of \$134.06.

Issue 4: Utilities – \$673.75

Relevant Submissions

The Landlord's Position

33. The landlord pointed to the submitted rental agreement (JS #1) which states that the oil tank was to be filled by the tenant when she vacated the unit. The landlord stated that the tenant had not complied with that agreement and she submitted an invoice (JS #10) showing that she was charged \$673.75 to have the oil tank filled on 01 October 2018.

34. The landlord stated that the oil tank was shared between the tenant and the occupants of the downstairs rental unit and it was agreed at the beginning of the tenancy that the tenant would pay 75% of the oil consumed at the complex while 25% would be charged to the downstairs unit.

The Tenant's Position

35. The tenant did not contest the landlord's claim that the tank had not been filled before she vacated. She complained, however, that the occupants of the downstairs unit were using more than 25% of the oil.

Analysis

36. There was no dispute that the tenant had agreed to have the oil tank filled when she vacated the unit and there was no dispute that the tenant had agreed to share the costs of the oil with the downstairs tenants on a 75% - 25% split. Although the tenant may have felt, in retrospect, that the agreement was not fair, that agreement was not altered during the course of her tenancy.
37. As the tenant vacated on 01 October 2018, the same day the tank was filled, I find that she is responsible for 75% of the costs the landlord had incurred to have the tank filled.

Decision

38. The landlord's claim for a payment of utilities succeeds in the amount of \$505.31 (\$673.75 x 75%).

Issue 5: Rent – \$2550.00

Relevant Submissions

The Landlord's Position

39. The agreed rent was set at \$1300.00, due on the 1st day of each month. The landlord testified that the last payment she had received from the tenant was \$400.00 on 02 September 2018. \$350.00 of that payment was for rent that was owing for August 2018 and \$50.00 was credited towards September's rent, leaving a balance of \$1250.00 for that month.
40. The landlord also stated that she was unable to secure new tenants for October 2018. She is also seeking a payment of \$1300.00 in compensation for the loss of rental income she suffered for that month as the tenant had not given her a proper termination notice. The landlord stated that she was entitled to a full month's notice that their rental agreement was terminating and she pointed out that the tenant had given her notice on 02 September 2018 and not 01 September 2018 as required.

41. The landlord testified that as soon as she was informed by the tenant that she was moving out she immediately started to advertise the rental unit on Kijiji and during September 2018 she had several viewings of the unit. Despite her efforts, the landlord was unable to find new tenants until 15 December 2018.

The Tenant's Position

42. The tenant acknowledged that she had not paid rent for September 2018 and she agreed that she owes the landlord \$1250.00 for that month.
43. The tenant argued, however, that the landlord is not entitled to any rent for October 2018 as she was not residing at the unit during that period. She also testified that she had given the landlord notice on 01 September 2018, not 02 September 2018 as the landlord had claimed, and she claimed that her notice met the 30-day notice requirement.

Analysis

44. The tenant did not contest the landlord's claim that she had not paid rent for September 2018 and I therefore find that the landlord is entitled to a payment of rent in the amount of \$1250.00 for that month.
45. Regarding October's rent, the landlord claimed that the tenant gave notice on 02 September 2018 and she argued that because the notice was 1 day late she was unable to secure new tenants for October 2018. However, I find that the landlord had not presented enough evidence at the hearing to establish, on the balance of probabilities, that the notice was given on 02 September 2018 as opposed to 01 September 2018, as the tenant claimed. As such, her claim for rent for that month does not succeed.

Decision

46. The landlord's claim for a payment of rent succeeds in the amount of \$1250.00.

Issue 6: Late fees - \$75.00

Relevant Submissions

The Landlords' Position

47. The landlord has assessed late fees in the amount of \$75.00.

Analysis

48. Section 15.(1) of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

49. The minister has set the following fees:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

Decision

50. As the tenant has been in arrears since at least September 2018, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 7: Hearing Expenses

51. The landlord submitted a hearing expense claim form and a receipt showing that she had paid a fee of \$20.00 to file this application. As the landlord's claim has been successful, the tenant shall pay this hearing expense.

Issue 8: Security Deposit

52. The landlord stated that the tenant had paid a security deposit of \$925.00 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and order.

Summary of Decision

53. The landlord is entitled to the following:

a) Cleaning	\$38.30
b) Other expenses	\$108.01
c) Compensation for damages	\$134.06
d) Utilities	\$505.31
e) Rent.....	\$1250.00
f) Late fees.....	\$75.00
g) Hearing expenses.....	\$20.00
h) LESS: Security deposit.....	(\$925.00)
Total Owing to Landlord	<u>\$1205.68</u>

27 March 2019

Date


John R. Cook
Residential Tenancies Tribunal