

Residential Tenancies Tribunal

Decision 19-0093-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:30 pm on 06 January 2020 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] hereafter referred to as the landlord, participated in the hearing and was represented by [REDACTED] - (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as tenant1, participated in the hearing (*Affirmed*).
4. The respondent, [REDACTED], hereafter referred to as tenant2, participated in the hearing (*Affirmed*).
5. The details of the claim were presented as a written fixed term rental agreement with rent set at \$1050.00 per month and due on the 1st of each month. The security deposit for this tenancy has been addressed through a previous claim and decision ([REDACTED]). The landlord testified that both parties agreed to assign a new lease to a new tenant found by the tenants for the landlord.
6. 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

7. The tenant, [REDACTED], was not served with a copy of the Application for Dispute Resolution but agreed to waive her right of service of the documents and continue with the hearing.
8. The tenant, [REDACTED], was served with a copy of the Application for Dispute Resolution and acknowledged receiving it on 08 November 2019 by electronic means.
9. The landlord amended the application to remove the request for an administration fee in the amount of \$250.00.

Issues before the Tribunal

10. The landlord is seeking the following:
 - a) Payment of rent owing **\$750.00**;
 - b) Cleaning Expenses - **\$144.00**
 - c) Hearing Expenses.

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
12. Also relevant and considered in this case are:
 - a. Sections 34 and 35 of *the Act*; and
 - b. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF.*

Issue 1: Rent Owing - \$750.00

Relevant Submissions

Landlord Position

13. The landlord stated that he had entered into a written fixed term rental agreement with the tenants, commencing 01 June 2019 and set to expire 30 May 2020. The agreed rent was set at \$1050.00 per month and due on the 1st day of each month. The security deposit which was collected on this tenancy has been

addressed and ordered returned under an order from this Division (██████████). The landlord stated that the tenants vacated on 26 July 2019.

14. The landlord testified that the new lease entered into once the tenants vacated was an amount less than the agreed rent in the respondent's agreement (\$975.00 vs \$1050.00). The landlord testified that he is seeking the difference in the rent at \$75.00 per month for the 10 months remaining on the respondents lease. The landlord is claiming \$750.00.
15. The landlord submitted into evidence a statement of account (**Exhibits L # 1**) along with a copy of the rental agreement (**Exhibit L # 5**). The landlord stated that rent is owed in the amount of \$750.00.

Tenant Position

16. The tenants testified that it is their opinion that this claim is and was tangled up in the decision rendered under ██████████. It was their opinion that the landlord chose to enter into an agreement with a new tenant at a lower rate and that is not their issue.

Analysis

17. I have reviewed the testimony and evidence of the landlord and tenants in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenants.
18. When parties enter into a written fixed term contractual obligation, both parties are virtually locked into that agreement unless there was an egregious deception on the part of one of the parties or by way of mutual agreement of both parties to terminate the agreement.
19. The agreement presented into evidence as part of the claim (**Exhibit L # 5**) was an unsigned copy of the agreement with only the landlord's signature on it. The tenants however, during the agreement agreed that they had indeed signed an agreement with the landlord for the terms outlined in this agreement. As such, I will accept that as factual and take the contents of this agreement to be a signed fixed term agreement.
20. The tenants did agree for the landlord to retain \$1000.00 of the security deposit if they were paid \$1021.88 and a release from the rental agreement was provided (**Exhibit T # 3**). The landlord acknowledged that an e-transfer in the amount of \$1021.88 was sent to the tenants and received. There was no copy of a release from the agreement submitted into evidence. Further, there was no acknowledgement from the landlord at the hearing that the tenants were released from the agreement.

21. Without a release from the rental agreement, the tenants and landlord remain contractually responsible for the agreement to its completion. The landlord did experience a financial loss in rent when he set up the new agreement with the new tenant which resulted in a monthly loss of \$75.00 per month. I find that the tenants are responsible for this loss. I am not able to make an award for a future loss as it hasn't yet occurred and it may never occur or may be larger. To that end an award can be made up to the month in which the hearing occurred and in this case it is (January 2020). Therefore, I find the tenants responsible for the difference in rent for the period 01 August 2019 to 31 January 2020 totaling **\$450.00** (6 months at \$75.00 per month = \$450.00.).

Decision

22. The landlord's total claim for rent succeeds in the amount of \$450.00.

Issue 2: Compensation for Cleaning Expenses - \$144.00

Landlord Position

23. The landlord testified that when the tenants vacated the property, he had to have someone clean the unit as the tenants failed to do so.
24. The landlord submitted into evidence a copy of an invoice from his current tenant **(Exhibit L # 2)** [REDACTED], for cleaning services in the amount of \$144.00 representing 8 hours of cleaning at a rate of \$18.00. The invoice outlined what the current tenant claimed to have completed. The cleaner did not attend the hearing to provide testimony or did not provide a sworn statement to this fact.
25. The landlord further submitted photos **(Exhibit L # 3)** taken by [REDACTED] after he moved into the property. The landlord makes the blanket statement that he had to clean the unit without any testimony from the person who cleaned the unit.

Tenant Position

26. The tenants questioned the validity of a new tenant billing out cleaning time and the landlord charging this time back to the respondents in this matter as a conflict of interest.
27. The tenants testified that they cleaned the property as they were leaving it in the condition as when they found it 1 month previous. The tenants submitted into evidence a sworn witness statement from [REDACTED] **(Exhibit T # 2)**, who indicated that the property was indeed cleaned by the tenants. The tenant further stated that they themselves did not use the stove much and that it was dirty with

grease when they moved in. They testified that they cleaned the oven to the condition when they accepted the unit.

28. The tenants dispute this portion of the landlord's claim.

Analysis

29. In any damage claim, it is the responsibility of the applicant to show on the balance of probabilities that the respondents are responsible for the damages claimed, that the damages exist and an appropriate valuation for the damages. In this matter, the landlord has not established the condition of the property at the onset of the tenancy in question regardless if the tenants notified or failed to notify the landlord of any deficiencies once they moved into the unit.
30. The lack of any baseline condition reports, series of pictures or witness testimony, there is no possible way for the landlord to establish tenants' liability. The entire burden of proof rests with the applicant. As such, I find that the landlord has failed to establish the necessary elements for a successful damage claim and find that the landlord's claim for cleaning expenses fails.

Decision

31. The landlord's claim for cleaning expenses fails.

Issue 3: Hearing Expenses

Landlord Position

32. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (██████████) (**Exhibit L # 4**). The landlord is seeking these costs.

Analysis

33. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord 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 tenants are responsible to cover these reasonable expenses.

Decision

34. The tenants shall pay the reasonable expenses of the landlord in the amount of \$20.00.

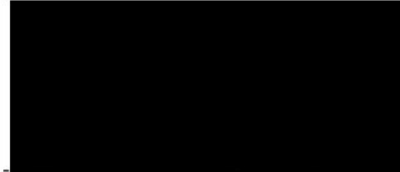
Summary of Decision

35. The landlord is entitled to the following:

- a) Rent Owing\$450.00
- b) Hearing Expenses \$20.00
- c) **Total owing to Landlord****\$470.00**

03 April 2020

Date



Michael Greene
Residential Tenancies Tribunal