

Residential Tenancies Tribunal

Decision 19-104-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 am on 29 May 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.
3. The respondent, [REDACTED], which trades as [REDACTED] hereinafter referred to as “the landlord”, was represented at the hearing by [REDACTED] (“DH”). The home owner, [REDACTED] (“MO”), also participated in the hearing.

Issues before the Tribunal

4. The tenant is seeking the following:
 - An order for a refund of the security deposit in the amount of \$372.00,
 - An order for a refund of rent in the amount of \$570.00,
 - An order for compensation for inconvenience in the amount of \$5000.00,
 - An order for a payment of utilities in the amount of \$240.00, and
 - An order for a return of missing possessions valued at \$18,625.00.
5. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$595.00,
 - An order for a payment of late fees in the amount of \$75.00,
 - An order for the costs of cleaning, totalling \$150.00,
 - An order for \$750.00 for the costs of moving and storing the tenant’s possessions, and
 - Authorization to retain a \$372.00 security deposit.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this case are sections 10, 14, 15 and 33 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

8. The tenant amended her application at the hearing and stated that she was no longer seeking an order for a payment of utilities.
9. The tenant called the following witness:
 - [REDACTED] (RF): case manager at [REDACTED]

Issue 1: Did the tenant abandon the rental unit, or did the landlord illegally seize the unit and the tenant's possessions?

Relevant Submissions

The Landlord's Position

10. The landlord and tenant entered into a 1-year, fixed-term rental agreement on 30 November 2018 and a copy of the executed lease was submitted at the hearing (NP #1). The agreed rent was set at \$595.00 per month and the tenant paid a security deposit of \$372.00.
11. DH stated that the tenant had changed the locks on the doors to the rental unit sometime in December 2018 and had refused to provide her with a set of keys to the new lock.
12. DH also stated that the tenant had been complaining to the [REDACTED] about the condition of the rental unit and representatives from the [REDACTED] were demanding the landlord to allow them into the premises. DH stated that she could not provide access to these representatives as she had no key to the rental unit.
13. DH also complained that in January 2019 her relationship with the tenant began to deteriorate and she stated that she was also receiving complaints from another tenant who lived at the complex, TW. In a submitted affidavit (NP #4), TW writes that the tenant was constantly harassing her about lights being left on,

about the smell of cigarettes coming from her unit and about the fact that she had been keeping 2 noisy dogs in her apartment.

14. DH said that because of the issues she was having with the tenant she issued her with a termination notice on 05 January 2019 and a copy of that notice was submitted at the hearing (NP #2). That notice was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy) and it had an effective termination date of 11 January 2019.
15. DH stated that she went to the rental unit on 11 January 2019 and although some of the tenant's possessions were still at the unit, she claimed that the unit was in a mess and she considered the unit to have been abandoned. She also testified that the tenant had cut off all communication with her during this period. She stated that she had been blocked on the tenant's telephone and she claimed that she visited the unit several times between 05 January and 11 January 2019 looking to speak with the tenant in person but she claimed that she was never there.
16. DH stated that she changed the locks to the unit on that date.
17. MO gave a slightly different version of events. He stated that already on 05 January 2019, the day the termination notice was issued, DH had suspected that the tenant had abandoned the rental unit and she posted a notice of abandonment on the tenant's door on that day and a copy of that notice was submitted at the hearing (NP #3). According to that notice, signed by "[REDACTED]", the landlord will be entering and taking possession of the unit at noon on 06 January 2019, unless she hears from the tenant that she had not abandoned the unit.
18. DH recollected that she actually did enter on 06 January 2019, as per her notice, and she described the condition of the unit being the same as previously recounted in paragraph 15, above.
19. DH stated that she returned on 11 January 2019 and had her workers changed the locks on that date. With respect to the tenant's possessions which were in the unit, the landlord's workers removed those items from the apartment and stored them in the basement at [REDACTED].
20. MO stated that he was informed by the workers who moved the tenant's belongings that they were in poor condition and they considered them to be garbage. Instead of disposing of those items, though, he tried to make arrangements with the tenant to have them returned to her.
21. MO stated that after 11 January 2019, after the locks had been changed, most of his and DH's dealings concerning the tenant were with [REDACTED] (HM), a case manager at [REDACTED]. MO claimed that he had tried to have the

tenant's possessions returned to her, but she did not have a fixed address where they could be delivered.

22. With the assistance of Social Services, on 16 February 2019, [REDACTED] [REDACTED] made arrangements with [REDACTED] Movers to have the tenant's possessions removed from [REDACTED] and stored at their storage facility. On 08 April 2019, T&T Movers delivered the tenant's possessions to her at her new apartment on [REDACTED].

The Tenant's Position

23. The tenant acknowledged that she had changed the locks to the rental unit. She stated that although they were working when she moved in, on 18 December 2018 she found that the lock was "stripped" and it would no longer secure the door. She testified that she contacted both DH and MO about this issue but they did not respond to her request to have it repaired.
24. The tenant stated that she purchased a new lock herself on 19 December 2018 and she had someone install it in the door for her. She stated that the landlord's workers showed up at the unit on 24 December 2018, 5 days after she had complained, ready to install a new lock.
25. The tenant denied that she had abandoned the rental unit and denied that she had expressed to DH that she was going to move out of the unit. She also stated that she had never before seen the termination notice (NP #2) or the notice of abandonment (NP #3) that were submitted at the hearing. The tenant stated that had she been given a termination notice by the landlord she would have been able to use that notice as evidence that her tenancy had come to an end and AESL would have subsidized her rent for a new unit on 01 February 2019. Instead, because there was no notice, and because DH would not provide one to her after she was locked out, she was not able to secure a new unit until 01 April 2019.
26. The tenant submitted a USB drive at the hearing and played a video containing text-messages she had had with both DH and MO during December 2018 and January 2019.
27. On 02 January 2019, DH informs the tenant that she had not yet received rent for January 2019. The tenant responded to DH and reminded her that her rent is paid by the Department of Advanced Education, Skills and Labour (AESL) and that she will speak with them on 03 January 2019 to inquire about the rent. In that exchange, DH also complains about the fact that the tenant had changed the locks at the unit without her permission. The video also shows that another text-message was sent to DH on 06 January 2019, but its content is partially blocked in the video.

28. The video also shows that on 02 January 2019 the tenant had been communicating with MO and she informs him that she will be visiting AESL the following day to inquire about the rent. She also complains to him in that exchange that she had spent \$55.00 to have the lock changed and over \$200.00 to purchase smoke alarms and have those installed. In response, MO instructs the tenant not to install locks or detectors as he has his own and he also states that there was a smoke detector installed when the tenant moved in.
29. On 04 January 2019, the tenant informs MO that she will be sending him his rent on 07 January 2019. On 05 January 2019 she writes the following text-message to MO: "No response [REDACTED]. I guess it is you all along [sic]. How sad is that".
30. The next text-message sent to MO is dated 11 January 2019, the day the locks were changed. She writes:

My medications are in that apt which u had me locked out illegally. I have a disability and i need to take my medication daily. You are a lowlife who prays on people. Lock a woman out with a broken ankle.
31. The tenant denied DH's claim that she had blocked her on her telephone and she denied that DH had personally called on her between 05 January and 11 January 2019. She pointed out that her ankle was broken during this period and she rarely left the apartment.
32. On 11 January 2019, the tenant stated that she left her apartment to pay a visit to [REDACTED] and when she returned a couple of hours later, she found that the landlord had changed the locks to her apartment.
33. The tenant had no dealings with either MO or DH after that date and case managers from [REDACTED] took up her cause and reached out to DH and MO looking for a solution.
34. RF, the tenant's current case manager at [REDACTED], was called as a witness. When the tenant was initially locked out of the unit, her case manager at the time was HM and RF submitted into evidence contemporaneous notes that HM had taken after each of her interactions with the tenant (DM #1, DM #2). RF stated that these notes form part of their client's records and they are discussed at collaborative meetings each morning at [REDACTED].
35. According to HM's notes, the tenant came to [REDACTED] on 11 January 2019 and informed HM that she had been locked out of her unit by the landlord. On that same day, HM writes that she was in contact with DH who informed her that she had no choice but to change the locks to the unit as tenant was in breach of her lease. DH complained that the tenant was behind in her rent for January 2019, that she had dogs on the property and that she had been smoking. The notes state that DH refused to allow the tenant to retake possession of the rental unit.

36. With respect to the tenant's belongings, the notes also show that DH had told HM that she was in possession of her belongings though she would not disclose to her their location and she would not allow the tenant access to them. The notes also show that DH informed HM that she would return her possessions once the tenant secured a new apartment and assured her that they would be taken care of.
37. The notes also show that HM was informed by DH that she had changed the locks to the doors of the rental unit even though she had not issued a termination notice to the tenant. Nowhere in HM's notes does she write that DH had informed her that the tenant had abandoned the rental unit and RF testified that she attended the collaborative meetings at [REDACTED] and the issue of abandonment was never raised while discussing the tenant's case.
38. RF further testified that the reason it took so long for the tenant to have her possessions returned to her was because she was unable to secure funding from AESL for rent and for a new security deposit. She stated that it is policy with AESL that they would not subsidize rent and the deposit for a new rental unit until the tenant can establish that the previous rental agreement had been terminated. RF stated that the tenant informed her that she had never received a termination notice from the landlord and RF stated that DH also refused to provide her with a copy of a termination notice as no notice had been issued.

Analysis

39. Did the tenant abandon the rented premises, as alleged by DH and MO, or had the landlord locked the tenant out of her rental unit while the tenancy was still ongoing? Deciding whether the tenant is entitled to any compensation for inconvenience or whether she owes rent to the landlord for January 2019, etc., hinges on how that question is answered.
40. I found the testimony of the tenant to be credible and believable and she provided a coherent account of what had been taking place in the days leading up to 11 January 2019. The notes submitted from HM and the testimony of RF show that the tenant's version of events had remained consistent since January 2019.
41. On the other hand, I found the testimony of DH to be inconsistent. For example, she testified that the reason that she had had changed the locks to the unit on 11 January 2019 was because between 05 January and 11 January 2019 she had been having telephone conversations with the tenant and the tenant had informed her that she no longer wanted to reside at the rented premises and was planning on leaving. But DH also testified at a later part in the hearing that she had changed the locks at the unit because, between 05 January and 11 January 2019, she was unable to reach the tenant by telephone and there was no response when she went to the unit.

42. But the tenant submitted evidence in the form of text-messages at the hearing showing the conversations she had been having with both DH and MO in early January 2019. In none of these messages does the tenant give any indication that she had plans to move out of the rental unit and the messages from DH and MO give no indication that they are seeking to have her move out, that they had given her a termination notice or that they suspected that she had abandoned the rental unit.
43. Additionally, DH was unable to provide a coherent answer to this Tribunal as to why, on 05 January 2019 she posted both a termination notice and a notice that she suspected that the tenant had abandoned the rented premises.
44. Based on the evidence submitted at the hearing, I conclude that the landlord did not have any reasonable grounds to suspect that the tenant had abandoned the rented premises or that she had moved out of the premises. Just a day before the notice was posted, for example, the tenant had sent a text-message to MO indicating that she would have rent sorted out by 07 January 2019.
45. The tenant also denied that she had received either the termination notice or the notice of abandonment and I found that testimony to be credible. That testimony is bolstered by HM's notes in which she several times writes that DH had informed her that she had changed the locks at the unit without first issuing a termination notice.
46. But even if the landlord did post the abandonment notice, despite my finding that DH and MO had no grounds to suspect abandonment, I further find that once DH entered, she ought to have realized that the tenant was still residing in the unit as all of her possessions were still there.
47. Accordingly, I conclude that DH had improperly ended this tenancy, without notice to the tenant, and she acted in contravention of at least 2 of the statutory conditions outlined in the *Residential Tenancies Act, 2018*, which state:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

5. Entry of Residential Premises - Except in the case of an emergency, the landlord shall not enter the residential premises without the consent of the tenant unless

(a) notice of termination of the rental agreement has been given and the entry is at a reasonable time for the purpose of showing the residential premises to a prospective tenant or purchaser and a reasonable effort has been made to give the tenant at least 4 hours' notice;

(b) the entry is made at a reasonable time and written notice of the time of the entry has been given to the tenant at least 24 hours in advance of the entry; or

(c) the tenant has abandoned the residential premises under section 31.

6. Entry Doors - Except by mutual consent, neither the landlord nor the tenant shall, during the use or occupancy of the residential premises by the tenant, alter a lock or locking system on a door that gives entry to the residential premises.

48. I also find that by locking the tenant out of the unit and by removing her possessions from the property the landlord had also acted in violation of s. 33 of the Act, which states:

Seizure of property

33. A landlord shall not take a tenant's personal property to compensate for a contravention of an obligation by the tenant, including a failure to pay rent.

Issue 2: Security Deposit - \$372.00

49. It is not disputed that the tenant had paid a security deposit of \$372.00 on 30 November 2018 and receipt of that deposit is acknowledged in the submitted lease (NP #1).
50. It was also not disputed that the landlord had not returned the deposit to the tenant and that they had not entered into any written agreement on the disposition of that deposit.

Analysis

51. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits and the relevant subsections state:

Security deposit

14. (8) *A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.*

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

(10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

(11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

52. The tenant served the landlord with a copy of her application on 06 March 2019. If DH believed the landlord had a claim to that deposit she was required to file an application no later than 18 March 2019. The landlord's application was filed with this Section on 27 March 2019.
53. As the landlord's application was not filed within the 10 days after she was served by the tenant, she is required, as per ss. 14.(12) of the Act, to refund the security deposit to the tenant.

Decision

54. The tenant's claim for refund of the security deposit succeeds in the amount of \$372.00.

Issue 3: Refund of Rent - \$570.00

Issue 4: Rent - \$595.00

Relevant Submissions

The Tenant's Position

55. The agreed monthly rent was set at \$595.00. The text-messages submitted by the tenant show that on 02 January 2019 DH was inquiring about the rent and on 04 January 2019 the tenant indicates that she had been speaking with AESL and she informs MO that she will give the rent him on 07 January 2019.
56. The tenant acknowledged that she did not pay that rent to the landlord on 07 January 2019 and she stated that she had informed DH and MO that it was at her apartment and she would pay it when they sent a worker to her unit to complete the repairs that she had been asking to have completed.
57. The tenant stated that when she left the unit on 11 January 2019 she had placed her rent money, a total of \$570.00 in cash, in an envelope on the door to the refrigerator. The doors to the unit were locked a couple of hours later and that envelope of cash was never returned to the tenant.
58. The tenant is seeking an order for a refund of that rent.

The Landlord's Position

59. DH stated that this portion of the tenant's claim made no logical sense. She claimed that if she or MO were aware that the tenant was in possession of the rent they would have gone to her apartment to collect it. She pointed out that the main part of her job is to collect rent.
60. Both MO and DH denied that there was an envelope of cash at the unit when they entered on 11 January 2019.
61. DH stated that she had not received rent for January 2019 and she is seeking an order for a payment of \$595.00 for that month.

Analysis

62. As I determined above, the landlord changed the locks on her rental unit, without her knowledge or permission, and seized her possessions, in contravention of the *Act*, on 11 January 2019.
63. As the tenant had use and enjoyment of the unit up to that date, I find that she is responsible for paying rent for the first 10 days of January 2019. I calculate that amount to be \$191.94 ($\$595.00 \text{ for January 2019} \div 31 \text{ days} \times 10 \text{ days}$).
64. With respect to the tenant's claim that the landlord had taken \$570.00 in cash, which had been left on the refrigerator door, I find that there was not enough evidence submitted at the hearing to allow me to make a finding with respect to that issue.

Decision

65. The landlord's claim for an order for a payment of rent succeeds in the amount of \$191.94.
66. The tenant's claim for a return of rent does not succeed.

Issue 5: Late Fees - \$75.00

Relevant Submissions

The Landlords' Position

67. The landlord has assessed late fees as the tenant had not paid her rent for January 2019.

Analysis

68. Section 15 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.

69. Regarding the late fees, the minister has prescribed the following:

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

70. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 6: Compensation for Inconvenience - \$5000.00

Relevant Submissions

The Tenant's Position

71. This portion of the tenant's claim concerns the costs the tenant had incurred immediately after she was locked out of the rental unit.
72. The tenant testified that it was too expensive for her to stay in [REDACTED] after 11 January 2019 and she decided to go to [REDACTED] where she stayed at [REDACTED] for 12 nights.
73. The tenant testified that she had spent \$570.00 to stay at the B&B for those 12 nights and she pointed to 7 screenshots she had taken showing that she had sent e-Transfers to [REDACTED]. No other receipts were submitted at the hearing.

The Landlord's Position

74. MO questioned the authenticity of the e-Transfer receipts and he argued that the tenant ought to have submitted receipts at the hearing. He also claimed that he is unable to find a [REDACTED] on the internet.
75. MO also argued that it would have been cheaper for the tenant to stay at a shelter after she abandoned the rental unit and he stated that there are places in St. John's for social services recipients when they are unable to find housing. He argued that he cannot be held accountable for the tenant's decision to go to [REDACTED] and reside in B&B's when there were cheaper options in [REDACTED].

Analysis

76. Being locked out of a rental unit and having one's possessions seized, including medications, is undoubtedly stressful and inconvenient.
77. I also agree that if the tenant had needed to get emergency housing as a result of being locked out of her unit then she ought to be compensated for any costs she had incurred.
78. In determining whether the tenant is entitled to compensation, though, it must be borne in mind that even if the tenant had not been locked out, she still would have been responsible for paying rent to this landlord or to another landlord had the tenancy properly been terminated. A fair award in these sorts of cases, then, is the costs the tenant had incurred over and above the rent she would have been required to pay during that period for housing.
79. The tenant stated that she had spent \$570.00 for her B&B stay, and that amount is \$25.00 less than the rent she had agreed to pay for January 2019 to the landlord anyhow. As she has been ordered to pay \$191.94 for the period from 01 January to 10 January 2019 (cf. issue 4, above), I find that she is entitled to a

payment of \$166.94 in compensation for inconvenience (\$570.00 for the B&B plus \$191.94 for January 2019 less the agreed rent of \$595.00).

Decision

80. The tenant's claim for compensation for inconvenience succeeds in the amount of \$166.94.

Issue 7: Missing Possessions - \$18,625.00

Relevant Submissions

The Tenant's Position

81. The tenant stated that she secured new accommodations at [REDACTED] on 01 April 2019 and on 08 April 2019 [REDACTED] Movers delivered to her the possessions they had been storing at their facility since 16 February 2019.
82. The tenant stated that only some of her belongings were returned to her on that date and she claimed that anything of value was missing. Of the items that were returned, the tenant complained that it was either damaged or had been contaminated by rat feces. The tenant also complained that the movers had also returned to her items which did not belong to her at all.
83. In support of her claim, the tenant pointed to the photographs on her USB drive showing the items that she had received on 08 April 2019.
84. One set of photographs show the items that were given to the tenant but which she says did not belong to her. They include: a bag of hypodermic syringes, prescription medication belonging to a person named [REDACTED], DVDs with the name [REDACTED] taped to them, a toaster that does not belong to her, a spice rack, an electric piano, documents and papers belonging to other people, bags of clothing, drinking glasses, pots and pans, and bags with other miscellaneous items. In almost all of the photographs where the items are stored in boxes or bags, rodent feces is visible on items found inside and the bags or boxes have been chewed through presumably by rodents.
85. The tenant also pointed to another set of photographs showing the possessions that did belong to her. The photograph of her dresser shows that it was badly damaged and all the drawers are falling apart. She complained that all the glass panels in her fireplace were missing as well. One photograph shows that her coffee table was heavily scratched up. Her mattress and futon were also returned to her but the mattress is now stained and the photographs of the futon show that it was chewed through by rodents.

86. The tenant's clothing had been removed from the unit in garbage bags and the photographs show that most of these bags were ripped or chewed open and much of the clothing inside was stained and soiled and rodent feces was visible in numerous instances.
87. The tenant also complained that many of her belongings were not returned to her. She testified that she was a graphic designer by trade and she owned a DSL camera with a zoom lens that was not returned to her. She stated that all of her pictures of her family were on that camera. The tenant also stated that she had a 35 inch television, along with a DVD player, which was not returned. She also complained that her computer and chesterfield were not returned either.
88. The tenant also testified that none of her kitchenware, cutlery, plates, mugs or glasses were returned and neither was any of her food.
89. She also stated that she had recently discovered that an acquaintance of hers is now residing in the rental unit and she paid her a visit only to discover that the platform for her bed is still at the rental unit, being used by the landlord's new tenant, and so is her table and chair set. The tenant also observed one of her missing toolboxes at the unit. She also stated that the curtains which she had purchased are still hung in the windows at the unit.
90. With her application the tenant provided a list of the items that are either missing, damaged or disposed of because they were contaminated by rat feces (DM #6). She also submitted into evidence an affidavit from her son, KK, in which he states that he has knowledge of what items were in the tenant's possession after the tenancy began as he helped her move her items into the rental unit (DM #9). He confirms in that affidavit that the tenant owned a camera, a kitchen table and chair set, a TV, a blue ray player, a platform bed, a dresser, a fireplace as well as numerous boxes and suitcases containing clothing and footwear.
91. In addition to the list of missing, damaged or contaminated items, the tenant also provided a breakdown of the costs of replacing each item. According to the tenant, that list totals \$18,625.00. In support of the costs she is seeking her, the tenant also supplies screenshots from various websites showing what their replacement costs would be.

The Landlord's Position

92. MO claimed that the tenant had abandoned the rental unit and he had followed the requirements of the *Residential Tenancies Act, 2018* by moving the tenant's possessions into storage. Although he not been there when the move took place, he stated that he was informed by DH that the movers she had hired had told her that the tenant's belongings were in very poor condition and ought to have been considered to be garbage.

93. Instead of throwing these items out, however, he claimed that DH had been in contact with representatives at [REDACTED] so that he could make arrangements to have those possessions returned to the tenant. MO claimed that he had no interest in keeping any of the tenant's possessions and he did not want to keep them for any longer than he had to.
94. MO also claimed that there are no rats or rodents at his [REDACTED] storage space and he claimed that if there was any contamination of the tenant's possessions, it must have happened after those items were transported to [REDACTED] storage facility. He argued that he held the tenant's possessions in safe storage until 16 February 2019 and after that point they became the responsibility of [REDACTED] and ASEL and they ought to be held accountable for any damage or contamination.
95. MO also argued that the tenant has failed to prove that the items on her list actually exist. He pointed out that the rental unit is a small bachelor apartment and it is implausible that all of the items on the tenant's list were actually at the rental unit when she abandoned it. To counter her claim, the landlord submitted his own list of the items that he took from the property and placed in storage (NP #1).
96. According to that list, there was no camera, DVD player or computer at the unit. There was also no frame for either the mattress or the futon. MO also stated that he was informed that the movers had inspected the TV before they moved it and they had determined that it was broken. Regarding the fireplace, DH stated that although that item is not on the list supplied by MO, it nevertheless was moved on that date and she claimed that there were no glass panels in it when she moved it.
97. The list supplied by MO also states that the movers had moved a kitchen table and chairs, but DH stated that those items actually belonged to the landlord and were not returned to the tenant but rather were brought back to the rental unit.
98. With respect to kitchenware, cutlery, plates and food, DH stated that she had no memory that the tenant had any of these items in her rental unit and that was the reason they were not noted on list supplied by MO and the reason they were not returned to her. MO stated that if there were any foodstuffs in the unit they would have been disposed of before it went into storage for fear that they would spoil or rot.
99. MO argued that the bulk of the items on the tenant's list did not exist when DH took possession of the rental unit on 11 January 2019 and he claimed that the tenant was looking to enrich herself through this application.

Analysis

100. I have already determined, in section 1, above, that the landlord had entered the tenant's unit without her knowledge or permission, in violation of section 10.(1)6 of the *Residential Tenancies Act, 2018* and had seized her possessions, in violation of s. 33.
101. I don't accept MO's story that the tenant had abandoned the rental unit and I pointed out to him at the hearing that even if the tenant had abandoned her possessions, he failed to comply with the legislation set out in the *Residential Tenancies Act, 2018* concerning the treatment of a tenant's abandoned property. Section 32.(3) of the *Act* requires that the landlord compile an inventory of the tenant's abandoned property and at his earliest convenience provide that inventory to the Director of Residential Tenancies and to the tenant. The inventory the landlord presented at the hearing was first seen by the tenant on the day of the hearing.
102. I accept the tenant's testimony and the testimony of DF that DH would not return those items to the tenant after they were seized and DH would not allow the tenant access to those items or disclose their location. Based on the timeline of events, it seems probable that the landlord only decided to make an effort to return these items to the tenant after DH and MO were served with the tenant's Application for Dispute Resolution.
103. Although MO argues that the tenant's list of her possessions is inaccurate, I found that neither MO nor DH were able to give a clear account of what items were removed either. MO stated that he was not present during the move on 11 January 2019 and I therefore have to chalk up all of his testimony concerning that matter as hearsay. I also note that no photographs were taken on that date showing what possessions were removed from the unit or what condition those items were in. DH stated several times that she had no recollection of whether there were certain items at the unit, e.g., clothing and kitchen supplies.
104. With respect to the condition of the tenant's belongings after they were returned to her, her photographic evidence clearly establishes that they had been stored somewhere where they had been exposed to rodents. The tenant's photographs show that many of the bags and boxes her possessions had been placed in had been chewed through and many of her belongings showed further evidence of being chewed on by rodents. In addition to the damage caused by the chewing, the tenant's photographs further show that there was a significant amount of rodent feces on her clothing, in shoes, in boxes containing papers, etc. and I agree with her that this had caused much of her belongings to be unsanitary and unusable.
105. The tenant's photographs also show that many of the items that had been returned to her were damaged and had not been properly taken care of after they had been removed from the tenant's apartment. The photographs show that a

dresser is badly damaged and the electric fireplace is missing the glass shelves. Additionally, many of the storage bins were cracked.

106. I also agree with the tenant that there were several items that were taken from her unit that were not returned to her. DH and MO acknowledge that there was a TV at the unit on 11 January 2019 and that item is not visible in the tenant's photographs and she testified that it was not returned to her. Additionally, the affidavit submitted by the tenant corroborates her claim that she was in possession of a camera, a DVD player, a platform bed, kitchen supplies, Christmas decorations and a kitchen table and chairs.
107. I also find it probable that the tenant had furnished the apartment with kitchen supplies, plates, cups and cutlery and that there was food at the unit when she was locked out. I likewise find it probable that all of the tenant's clothing was in the unit when the landlord seized her possessions.
108. Section 47.(1) of the *Residential Tenancies Act, 2018* outlines the sorts of remedies the Director may order on hearing an application and subsection (f) reads:

Order of director

47. (1) After hearing an application the director may make an order

...

(f) directing a landlord to deliver to a tenant possession of personal property taken in contravention of this Act or the rental agreement or to compensate a tenant for the value of the personal property taken

109. I have determined that the landlord had seized the tenant's possessions in contravention of the *Act*. I have also determined that many of her possessions are either missing, damaged or were contaminated or made unsanitary by the manner in which they were stored. Accordingly, I find that the landlord is responsible for compensating the tenant for the value of her personal property which was removed from her unit on 11 January 2019.
110. In making this assessment, I need to determine what items were left at the unit and what an appropriate replacement cost would be. In making this assessment, I am taking into account the fact that no photographs were submitted by either the landlord or the tenant showing the contents of the unit before 11 January 2019. I further must take into account the depreciated value of the items. It is impossible to be exact in this sort of case, but after weighing all of the above evidence I find that \$8000.00 is fair award, determined as follows:

- Clothing.....\$3000.00

- Food.....\$200.00
- Kitchenware\$200.00
- Camera/accessories\$1000.00
- TV\$200.00
- Electronics\$500.00
- Bedroom furniture\$1000.00
- Living room furniture\$1000.00
- Christmas decorations\$200.00
- Fireplace\$200.00
- Kitchen furniture\$200.00
- Tools/tool boxes\$300.00

- Total\$8000.00

Decision

111. The tenant’s claim for compensation for missing items succeeds in the amount of \$8000.00.

Issue 8: Moving and Storing - \$750.00

Relevant Submissions

The Landlord’s Position

112. The landlord is seeking \$150.00 for the costs of changing the locks at the rental unit and \$500.00 for the costs of moving and storing the tenant’s abandoned items. No receipts were submitted at the hearing.

The Tenant’s Position

113. The tenant pointed to the photograph of the receipt for the replacement lock she had purchased in December 2018. That lock had only cost her \$19.54 and she argued that the landlord’s claim for a new lock was excessive.

Analysis

114. I have determined that the landlord had improperly entered the tenant’s rental unit and changed the locks, in contravention of statutory conditions 5 and 6 and then seized her possessions, in contravention of s. 33 of the *Act*. He cannot be compensated for those infractions.

Decision

115. The landlord's claim for the costs of moving and storing the tenant's possessions does not succeed.

Issue 9: Cleaning - \$150.00

Relevant Submissions

The Landlord's Position

116. MO stated that he had hired 2 ladies to clean the unit after the locks were changed and he testified that he was charged \$150.00. No receipt was submitted at the hearing and no evidence was presented to establish the condition of the unit after 11 January 2019.

The Tenant's Position

117. The tenant stated that her apartment was clean on 11 January 2019 although she did concede that it was disorganized as she had a broken ankle.

118. The tenant stated that the apartment was not clean when the tenancy began and she claimed that the landlord never carried out any of the required repairs during her tenancy.

Analysis

119. No evidence was presented at the hearing to establish that the rental unit needed to be cleaned and no evidence was presented establishing that the landlord was charged \$150.00. As such, the landlord's claim does not succeed.

Decision

120. The landlord's claim for the costs of cleaning does not succeed.

Issue 10: Hearing expenses

121. The tenant was charged \$20.00 to file this application and she also submitted a receipt showing that she had paid RF a witness fee of \$100.00. As the tenant's claim has been successful, the landlord shall pay these expenses.

Summary of Decision

122. The tenant is entitled to the following:

a) Refund of Security Deposit.....\$372.00

- b) Compensation for Inconvenience.....\$166.94
- c) Damaged/Missing Possessions\$8000.00
- d) Hearing Expenses.....\$120.00

- e) LESS: Rent (\$191.94)
- f) LESS: Late Fees (\$75.00)

- g) Total Owing to Tenant.....\$8392.00

30 August 2019

Date



John R. Cook
Residential Tenancies Tribunal