

## Residential Tenancies Tribunal

Decision 19-0147-05

Denise O'Brien  
Adjudicator

---

### Introduction

1. The hearing was called at 11:25 a.m. on March 25, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The tenant, [REDACTED], hereafter referred to as the tenant, did not attend the hearing.

### Preliminary Matters

4. The tenant was not present or represented at the hearing. Prior to the hearing I called the number on file. The call went through to the message manager. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
5. According to Rule 29.05(2)(a) a respondent to an application must be served with an application for dispute resolution 10 clear days prior to the hearing date, and where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he/she has been properly served.

6. The affidavit of service submitted by the landlord shows that the notice of this hearing was served electronically on February 26, 2019 and the tenant has had 26 days to provide a response. The landlord submitted a copy of the text message sent to the tenant and copies of text messages between the landlord and tenant prior to sending the Application for Dispute Resolution. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.
7. The claim for payment of damages should read \$1219.42 not \$1248.67.

### **Issues before the Tribunal**

8. The landlord is seeking the following:
  - a. Payment of rent in the amount of \$2500.00;
  - b. Payment of utilities in the amount of \$582.46;
  - c. Compensation for payment of pest control in the amount of \$675.62
  - d. Compensation for damages in the amount of \$1219.42;
  - e. Compensation for inconvenience - \$199.50;
  - f. Hearing expenses.

### **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 18, 19 and 31 of the Act.

### **Issue 1: Payment of Rent - \$2500.00**

11. In determining an application for the payment of rent, the landlord is required to establish the rental rate and the payment record.

### Landlord Position

12. The landlord testified that the tenant moved into the unit on March 23, 2017 for a two year term with rent set at \$1500.00 per month due on the 1<sup>st</sup> of each month. Later he discovered you could not have a lease for two years so the tenancy converted to a month to month tenancy after the first year. He is seeking payment of rent in the amount of \$1000.00 for the month of November and \$1500.00 for the month of December 2018.

13. The landlord further testified that on October 2, 2018 the tenant mentioned to him through a text message (LL #2) that they were planning on moving out on November 1, 2018 or December 1, 2018. Then on October 9, 2018 he received an e-mail from Newfoundland Power (LL #2) informing him the tenant had requested to close the account effective October 31, 2018. Later that same day a text message (LL #5) was received from the tenant's husband notifying the landlord that the tenants would be vacating on November 30, 2018. The landlord said he never received a proper termination notice from the tenant.
14. The landlord testified that on October 21, 2018 he advertised the unit on Kijiji, NL Classifieds, and Buy and Sell. The landlord presented a copy of the ad that was posted on Kijiji on October 21, 2018 (LL #4). He said he showed the unit at least twice before the unit was re-rented for March 1, 2019.
15. The landlord further testified he received the full rent up to the end of October 2018. On November 6, 2018 he received \$500.00 through interac e-transfer (LL #6) towards the rent for November 2018. The message on the e-transfer stated they were moved out. The landlord took possession of the unit on November 7, 2018 but he did not post a notice of abandonment.
16. The landlord also testified that he is seeking rent for December 2018 because he was not sure when the tenants were moving out.

### **Analysis**

17. I have reviewed the testimony and evidence of the landlord and I find the tenant vacated on November 6, 2018 and the landlord received \$500.00 towards November's rent. The tenant did not terminate the tenancy as required under section 18.(1)(b) nor did the landlord post a notice of abandonment on the door as required under Section 31.(1) of the Act when a tenancy is not terminated in accordance with the Act. Further, the landlord did not establish he tried to mitigate his losses after he took back possession of the unit on November 7, 2018 as the ad he presented was dated for October 21, 2018.

### **Decision**

18. The claim for payment of rent for the month of November 2018 succeeds in the amount of \$1000.00 ( $\$1500.00 - \$500.00 = \$1000.00$ ). The claim for the payment of rent for the month of December fails.

## **Issue 2: Payment of Utilities - \$582.46**

### Landlord Position

19. The landlord testified that the tenant was responsible for the payment of the utilities as per the lease agreement (LL #1). He received notification from Newfoundland Power on October 9, 2018 that the tenant requested to close the account effective October 31, 2018. He said the unit has two meters. The cost for the electricity for the period November 1 – December 3, 2018 is \$278.46 (\$195.50 + \$82.96 = \$278.46). The cost for the electricity for the period December 3, 2018 – January 2, 2019 is \$300.41 (\$207.12 + 493.29 = \$300.41). The landlord presented copies of the four Newfoundland Power bills (LL #7).

### **Analysis**

20. The tenant was responsible for the payment of utilities and the power was converted back to the landlord's name on November 1, 2018. As outlined under the payment of rent the landlord was successful for the payment of rent for the month of November but was unsuccessful for the month of December 2018.

### **Decision**

21. The claim for payment of utilities for the month of November 2018 succeeds in the amount of \$278.46. The claim for payment of utilities for the month of December fails.

## **Issue 3: Payment of Pest Control Bills - \$675.62**

### Landlord Position

22. The landlord testified that he had to hire Orkin Canada a couple of times due to an issue with mice in the unit. He said they never had an issue with mice before these tenants lived in the unit. He lived in the unit and there were other tenants lived there before these tenants. He said he received a text message from the tenant in January 2018 informing him the unit was overrun with mice. He called Orkin Canada and a representative from the company went to the unit. A representative went back and forth to the unit from January 10, 2018 – May 13, 2019 as per the statement he received from Orkin Canada (LL #8) dated November 15, 2018. The statement states the dates the unit was visited and what happened on each date. For March 21, 2018 it states: make sure there is no garbage left out and food debris cleaned daily.

23. The landlord further testified that he received a text message from the tenant's husband on October 24, 2018 stating they thought they could hear mice and rats in the walls and the floors and that there was feces everywhere. The landlord called Orkin Canada again and a representative from the company visited the unit on October 29, 2019. The statement from Orkin Canada also stated that on October 29, 2018 there were mouse droppings found in all the common areas which needed to be cleaned and there was bird feed in the yard. Bird feed brings rodents. The landlord said the tenants were leaving garbage around and there is bird seed in the yard. The landlord took photographs of the outside of the unit on October 29, 2019 which shows there is a bird feeder in the backyard and there is bird seed scattered throughout the property (LL #9). He also testified that he received a letter from the [REDACTED] (LL #10) on August 16, 2018 notifying him the garbage container is dirty and must be cleaned.
24. The landlord testified he paid Orkin Canada three different times in the amounts of \$287.50, \$147.75 and \$244.37. The landlord presented two receipts from Orkin Canada. One dated January 10, 2018 in the amount of \$287.50 and the other receipt dated October 29, 2018 in the amount of \$244.37 (LL #19).

### **Analysis**

25. I have reviewed the testimony of the landlord and the evidence presented. I find that Orkin Canada visited the unit approximately 10 times between January 10, 2018 and May 13, 2018. They also visited on October 29, 2018 and again on November 8, 2018. Further the landlord did not present any evidence showing the condition of the property between January and May 2018 but he presented photographs that were taken on October 29, 2018 which shows bird seed on the property. The landlord is successful for the payment of the pest control bill for October 29, 2018.

### **Decision**

26. The claim for payment of the pest control bill succeeds in the amount of \$244.37 for the October 29, 2018 visit.

### **Issue 4: Payment of Damages - \$1219.42**

#### Landlord Position

27. Ceiling Repairs

The landlord testified that he received a quote from [REDACTED] Contracting (LL #13) in the amount of \$75.00 to repair the ceiling in the bathroom on the main floor and \$150.00 to repair the walls in the downstairs bathroom. The landlord said

the ceiling in the main bathroom has water damage. It looks like the bathtub in the bathroom directly over the main bathroom overflowed. He also testified that the walls in the downstairs bathroom have mould on them. Both bathrooms have not been painted since 2008.

28. Carpet

The landlord testified that the carpet that was installed just a couple of days before the tenants moved into the unit have 3 or 4 stains on it. It has to be replaced because they couldn't get it cleaned. They just wiped it. They never tried cleaning it with a carpet cleaner. The landlord paid Kent (LL #17) \$992.42 on March 27, 2017 for the purchase and installation of the carpet. The landlord presented photographs of the bathrooms and the carpet (LL #12, 15 & 16).

**Analysis**

29. I have reviewed the testimony of the landlord and the evidence presented in this matter. The evidence submitted show that the ceiling on the main floor bathroom was damaged and the walls in the downstairs bathroom had mould on them. However, the landlord did not show the condition of the ceiling and walls prior to the tenants moving into the unit. Further paint has a life expectancy of 3 – 5 years. The bathrooms have not been painted since 2008. As the bathrooms have not been painted in 10 years, the claim for repairs fails.
30. With respect to the carpet the photographs presented are not good quality photographs. It is very hard to see any stains on the carpet. Also the landlord did not try to remove the stains with a carpet cleaner. They only wiped the carpet. As the landlord did not try to clean the carpet with a carpet cleaner, the claim for replacement of the carpet fails.

**Decision**

31. The landlord's claim for damages fails.

**Item 5: Compensation for Inconveniences - \$199.50**

Landlord Position

32. The landlord testified that a regular tenancy gives him a lot of travel back and forth to the unit due to things breaking in the unit. He said he had to make at least 7 trips to the unit due to the issue of mice. He is claiming 90 minutes for each visit. This includes his time travelling to and from the unit and the time spent at the unit. The rate he is charging is \$19.00 per hour. The total cost for his compensation for inconveniences is \$199.50 (7 trips x 1.5 hours per trip x \$19.00 per trip = \$199.50).

## **Analysis**

33. I find the cost the landlord is claiming for his time would be a normal cost associated with carrying out his business.

## **Decision**

34. The landlord's claim for compensation for inconveniences fails.

## **Issue 6: Hearing Expenses - \$20.00**

35. Under the authority of Section 47.(q) the director may require the unsuccessful party to pay costs to the successful party to an application. Costs eligible to be awarded are identified in *Policy 12-1: Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

## Landlord Position

36. The landlord paid an application filing fee (LL #18) in the amount of \$20.00. The landlord is seeking this cost.

## **Analysis**

37. The cost the landlord incurred to make the application is considered a reasonable expense as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. Therefore, I find the tenant is responsible to cover the cost of the hearing expenses in the amount of \$20.00 as the landlord was partially successful in his claim.

## **Decision**

38. The tenant shall pay the landlord's hearing costs in the amount of \$20.00.

**Summary of Decision**

39. The landlord is entitled to the following:

- a) Rent owing ..... \$1000.00
- b) Payment of utilities..... \$278.48
- c) Payment for pest control ..... \$244.37
- d) Hearing expense..... \$20.00
- e) **Total Owing to Landlord..... \$1542.85**

June 18, 2019  
Date

  
Residential Tenancies Section