

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-0399-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:20 pm on 18 June 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 by teleconference. The respondent, [REDACTED] hereinafter referred to as "the tenant", did not participate in the hearing.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for vacant possession of the rented premises;
 - An order for compensation for damages in the amount of \$559.35;
 - An order for a payment of rent in the amount of \$1447.00;
 - An order for a payment of late fees; and
 - An order for a payment of other expenses totalling \$197.75.

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 are sections 15 and 19 of the *Residential Tenancies Act, 2018*, policy 9-3: Claims for Damage to Rental Premises and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her by telephone from the hearing room. This Tribunal's policies

concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) a respondent to an application must be served with claim and notice of the hearing 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 she has been properly served. The landlord submitted an affidavit with his application stating that the tenant was served with notice of the hearing, by e-mail, on 30 May 2019. The landlord also submitted a copy of that e-mail with his application and he submitted copies of the e-mail exchanges he had been having with tenant at that e-mail address. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

7. The landlord amended his application at the hearing and stated that he was no longer seeking an order for vacant possession of the rented premises as the tenant moved out on 24 April 2019.

Issue 1: Compensation for damages - \$559.75

Relevant Submissions

8. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant commencing 01 August 2018 and a copy of the executed lease was submitted with his application ([REDACTED] #1). The landlord stated that the monthly rent was set at \$875.00 and the tenant was paying that rent in semi-monthly installments of \$437.00.
9. The landlord stated that in 2019 the tenant fell into rental arrears and on 11 April 2019 he therefore issued her a termination notice and a copy of that notice was submitted with his application ([REDACTED] #2). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 23 April 2019. The tenant vacated on the following day.
10. The landlord stated that the tenant had rented a U-Haul trailer to move her items and when she backed that trailer into the driveway she drove it into the side of the house and damaged the exterior wall. The landlord submitted photographs at the hearing which were taken on 24 April 2019 showing the resulting damage ([REDACTED] ##3-9). He pointed out that several pieces of siding were cracked, the Tyvek was torn and the boards underneath were broken.
11. The landlord stated that he has temporarily patched the damaged area but he is seeking the costs to have it professionally repaired and returned to the condition it was in before the tenant caused that damage. With his application, he had submitted a quote from [REDACTED] ([REDACTED] #10) showing that they would repair that wall and siding for \$495.00 plus tax.

12. The landlord stated that the house was built 10 years ago and he stated that the siding was in good condition when the tenant moved in.

Analysis

13. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

2. *Obligation of the Tenant* - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
- That the respondent is responsible for the damage, through a willful or negligent act;
- The value to repair or replace the damaged item(s)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential tenancies policy 9-6.

Under Section 47 of the *Act*, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the *Act* or the rental agreement.

Order of director

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

- (a) *determining the rights and obligations of a landlord and tenant;*
- (b) *directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;*
- (c) *requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;*
- (d) *requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement;*

14. The evidence submitted by the landlord does establish that there was some damage caused to the exterior wall of the rental unit and I find that that damage was probably caused by the tenant with the U-Haul trailer.
15. Given that this siding was 10 years old, I find that the landlord is entitled to a depreciated award of \$350.00.

Decision

16. The landlord's claim for compensation for damages succeeds in the amount of \$350.00.

Issue 2: Other Expenses - \$197.75

17. The landlord testified that the tenant had not carried out any cleaning at the unit before she vacated and he also claimed that she had left behind some garbage and some damaged possessions she no longer wanted to keep, such as a couch and a broken dresser.
18. The landlord testified that his property manager went to the unit and removed the garbage and unwanted items and took them to the dump. He stated that it took him 1 hour to complete that work.
19. The landlord also stated that he had hired the downstairs tenant to clean the apartment and he testified that he had paid him \$75.00 for that work.

Analysis

20. I accept the landlord's claim that some cleaning and garbage removal was required after the tenant vacated.
21. I find that he is entitled to \$75.00 as reimbursement for the costs he incurred to have the unit cleaned and a payment of \$19.40 in compensation for 1 hour of his property manager's personal labour (policy with this Section is that \$19.40 is maximum hourly rate an applicant may claim for their personal labour).

Decision

22. The landlord's claim for the costs of cleaning and garbage removal succeeds in the amount of \$94.40.

Issue 3: Rent – \$1447.00

23. With his application, the landlord submitted records (████████#11) showing the payments he had received from the tenant since she moved into the unit. The

records show that from August through to December 2018 the tenant had been making 2 payments of \$437.00 each month.

24. In January 2019, the tenant made 2 payments of \$283.00, leaving a balance of \$308.00. And in March 2019, the tenant only made one of the semi-monthly payments of \$437.00 bringing the balance to \$745.00.
25. No payments were made in April 2019 and the landlord is seeking a pro-rated rent of \$700.00 for the period ending 24 April 2019, the day the tenant vacated.

Analysis

26. I accept the landlord's testimony and evidence in this matter and I find that the tenant has not paid rent as required.
27. Based on the evidence submitted at the hearing, I find that the tenant owes \$308.00 for January 2019, \$437.00 for March 2019 and \$700.00 for April 2019.

Decision

28. The landlord's claim for a payment of rent succeeds in the amount of \$1445.00.

Issue 4: Late fees - \$75.00

Relevant Submissions

The Landlords' Position

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

Analysis

30. 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.

31. 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

32. As the tenant has been in arrears since January 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 5: Security Deposit

33. The landlord stated that the tenant had paid a security deposit of \$500.00 on 09 July 2018 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, he shall retain the security deposit as outlined in this decision and order.

Issue 6: Hearing Expenses

34. The landlord submitted a receipt with his application showing that he had paid \$50.00 to have his affidavit of service notarized. He also paid a fee of \$20.00 to file this application. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

Summary of Decision

35. The landlord is entitled to the following:

a) Compensation for Damages	\$350.00
b) Other Expenses.....	\$94.40
c) Rent.....	\$1445.00
d) Late Fees	\$75.00
e) Hearing Expenses	\$70.00
f) LESS: Security deposit.....(\$600.00)	

Total Owing to Landlord \$1534.40

10 October 2019

Date

Job _____
Residential Tenancies Tribunal