

## **Residential Tenancies Tribunal**

Application 2019 No. 396SJ

Decision 19-0396-05

John R. Cook  
Adjudicator

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### **Introduction**

1. The hearing was called at 1:15 pm on 31 July 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", did not participate.

### **Issues before the Tribunal**

3. The landlord is seeking the following:
  - An order for compensation for damages in the amount of \$379.00;
  - An order for compensation for inconvenience in the amount of \$400.00; and
  - An order for "other" expenses totalling \$20.00.

### **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 14 of the *Residential Tenancies Act, 2018* 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 there was no telephone number where he could be reached. 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)

respondents 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 he has been properly served. The landlord submitted an affidavit with her application stating that she had personally served the tenant with notice of this hearing on 23 May 2019 and he has had 68 days to provide a response. 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 his absence.

7. This is the second application filed by the landlord concerning this tenancy. As a result of an application that was filed on 02 May 2019 (2019 No. 332SJ) the Director issued the landlord an emergency Order of Possession and also ordered that the tenant pay to the landlord any costs she incurred if she had to have the Order of Possession enforced by the Sheriff.

### **Issue 1: Compensation for Inconvenience - \$395.00**

#### **Relevant Submissions**

8. The landlord stated that she had entered into a monthly rental agreement with the tenant on 17 September 2018 and a copy of the executed agreement was submitted at the hearing (████ #1). The agreed rent was set at \$685.00 and it is acknowledged in the agreement that the tenant had paid a security deposit of \$475.00.
9. The landlord stated that the electricity to the rental unit was disconnected by Newfoundland Power and on 02 May 2019 she filed application with Residential Tenancies seeking an emergency Order of Possession. That application was granted and the landlord had the Sheriff enforce the order on the following day, 03 May 2019.
10. The landlord stated that she was charged \$395.00 by the Sheriff to enforce that order and to have the locks to the rental unit changed. No receipts or invoices were submitted at the hearing.
11. Through this application, she is seeking an order to be reimbursed for that amount.

#### **Analysis**

12. As indicated in Preliminary Matters, above, as a result of application ██████████ the landlord was awarded an Order of Possession of the rented premises as well as an order for any costs the landlord would incur if she had to have the Order of Possession enforced by the Sheriff.

13. I informed the landlord at the hearing that if she wished to be reimbursed for the costs she was charged by the Sheriff she could register that order ( [REDACTED] ) with Small Claims Court. I cannot issue a second order dealing with the same issue.

## **Decision**

14. The landlord's claim for compensation for damages does not succeed.

## **Issue 2: Compensation for Damages - \$379.00**

### **Relevant Submissions**

15. The landlord stated that she had intended to replace the bathroom vanity in the tenant's apartment during his tenancy. The tenant informed her that he knew how to install a vanity and it was agreed that he would do that work for the landlord and she would compensate him.

16. The landlord purchased a vanity and it was given to the tenant to install.

17. When the tenant was evicted, she found that the vanity had not been installed and she demanded that the tenant return it to her. She stated that the tenant informed her that he would return the vanity only if she refunded his security deposit to him and if she paid his utility bills. The landlord stated that she refused to do either.

18. After the tenant was evicted he eventually provided her with a new vanity, albeit one that was different from the one that she had originally purchased.

19. The landlord submitted a copy of an invoice at the hearing ( [REDACTED] #2) showing that she had that vanity installed by a professional plumber at a cost of \$225.00 + tax. That invoice also shows that the plumber had carried out some repairs on the bathtub. The total of the invoice comes to \$349.83 and the landlord is seeking an order for a payment of that amount.

### **Analysis**

20. In awarding compensation for damages, an underlying principle is that the compensation ought to be sufficient enough to return the applicant to as close as the same position she was in before the damages occurred.

21. In the case at hand, I was not given enough evidence to establish that the landlord was in any worse of a position when the tenant vacated than she was when the tenancy began.

22. The landlord had intended to replace the bathroom vanity and she was going to hire someone to install it. Although it was initially agreed that the tenant would do that work, she had a professional plumber do it instead. But since the tenant was not compensated for the work that he did not do, I don't see how the landlord is in any worse of a position, financially speaking. She had the vanity installed and she hired 1 person to do it. That was what she had intended all along.
23. I accept her claim that the vanity that the tenant had returned to her was different than the one that she had originally purchased, but no testimony or evidence was presented at the hearing to establish that the vanity that was eventually installed was of an inferior quality or was less expensive than the one that she had originally purchased. Without such evidence, I don't see how she is in any worse of a position because the vanity is different.
24. For these reasons, the landlord's claim does not succeed.

### **Decision**

25. The landlord's claim for compensation for damages does not succeed.

### **Issue 3 – Security Deposit**

26. The tenant paid a security deposit of \$475.00 on 17 September 2018 and receipt of that deposit is acknowledged in the submitted rental agreement.
27. This tenancy ended on 03 May 2019. According to section 14.(9) of the *Residential Tenancies Act, 2018* a landlord is required to return the security deposit to the tenant with 10 days after the tenancy ends, unless the landlord has a claim for all or part of the deposit.
28. As the landlord's claims for compensation for inconvenience and damages has not succeeded, she shall return the full amount of the security deposit to the tenant.

### **Issue 4: “Other” Expenses - \$20.00**

29. The landlord paid \$20.00 to file this application.
30. As the landlord's claim has not succeeded, she shall pay her own hearing expenses.

## **Summary of Decision**

31. The tenant is entitled to the following:

a) Refund of Security Deposit..... **\$475.00**

19 December 2019

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Date

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Residential Tenancies Tribunal