

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0079-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:04 AM on 20 May 2021 via teleconference.
2. The applicant, [REDACTED] [REDACTED] was represented at the hearing by [REDACTED] [REDACTED] and [REDACTED] hereinafter referred to as "landlord1" and "landlord2", respectively.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant", also participated.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$2100.00,
 - An order for a payment of late fees in the amount of \$75.00,
 - An order for a payment of \$75.00 in cleaning costs, and
 - Authorization to retain the security deposit of \$525.00.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this decision are sections 15, 19 and 22 of the *Residential Tenancies Act, 2018*, policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Rent - \$2100.00

Relevant Submissions

The Landlord's Position

7. The landlord submitted a rental agreement with her application █ #1) showing that she had entered into a 1-year, fixed-term lease with the tenant, commencing 01 May 2020. The agreed rent was set at \$700.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit in the amount of \$525.00 on 24 April 2020.
8. Landlord2 stated that on 28 November 2020, the tenant inquired about other potential rental properties managed by her property management company and on 28 December 2020 the tenant requested that the landlord start advertising his unit for rent. On 05 January 2021, the tenant informed the landlord that he would be moving out of his unit, and he vacated on 15 January 2021.
9. Landlord2 stated that after she had received the request from the tenant to start advertising the unit for rent, she placed a sign on the front lawn of the property and she also placed advertisements with NL Classifieds. With her application, the landlord also submitted copies of those advertisements █ ##3-5), showing that the first advertisement was placed on 29 December 2020, that it was renewed on 20 February 2021 and again on 14 April 2020.
10. Landlord1 stated that she only recently secured new tenants, and they are set to move in on 01 June 2021, and the unit has sat vacant since the tenant vacated.
11. As this was a fixed-term lease that was not set to expire until 30 April 2021, landlord2 argued that she is entitled to a payment of rent for the months of February, March and April 2021. She stated that the tenant's rent was paid and up-to-date for the period ending 31 January 2021.

The Tenant's Position

12. The tenant did not dispute the landlord's timeline of events.
13. The tenant stated that the reason he had inquired about other rental properties back in November 2020 was because he had lost his driver's licence, and his job, as a result of driving charge related to an alcohol relapse. He stated that if he did find another job in St. John's, it would be extremely difficult for him to get there from Paradise without a car, and he therefore needed to find a new apartment.
14. He also questioned why it was that the landlord had been advertising the unit at a rental rate of \$800.00 per month, when he was only paying \$700.00 per month during his tenancy.

Analysis

15. Section 18 of the *Residential Tenancies Act, 2018* deal with the requirements tenants must undertake when terminating their rental agreement, and the subsection 18.(1) states:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

...

(c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.

16. The landlords are right to point out that, as per s. 18.(1)(c), as this was a fixed-term lease that was not set to expire until 30 April 2021, the tenant could not terminate his agreement prior to that date.
17. Subsection 18.(8)(a) of the *Act*, though, does allow a tenant to break a lease, on 1-month's notice, and it states:

(8) Notwithstanding that the notice period required under subsection (1) is longer than one month, a tenant and any other tenants in the same residential premises may terminate a rental agreement by giving one month's notice to the landlord under the following circumstances:

(a) the tenant's income is reduced as a result of ill health and the notice to the landlord is accompanied by evidence of the tenant's reduction in income

18. I have no reason to disbelieve the tenant's claim that he has an alcohol problem, and it is my understanding that in some quarters alcoholism is characterized as a disease or illness. There also seems to be a causal connection here between the tenant's problem with alcohol, his driving offence, the loss of his job, and hence the reduction in his income.
19. But I find that this subsection of the *Act* was not invoked by the tenant when he informed the landlord on 05 January 2021 that he was terminating his rental agreement
20. Landlord1 stated that the tenant only informed her that he had lost his licence as a result of a "driving under the influence" charge and that he was now having transportation issues. She testified that he never did inform her, or provide any documentation to her showing, that he was an alcoholic or that his income had been reduced as a result. The tenant did not dispute that claim.

21. Furthermore, even if the proper documentation had been filed with the landlord, he was still required to provide the landlord with a written, 1-month notice of termination. Giving notice on 05 January that you are vacating on 15 January 2021 is not a 1-month notice.
22. Where a tenant does not terminate his rental agreement in accordance with the *Act*, he is considered to have abandoned the rented premises, and he is liable for any damages which are caused by that abandonment, including any loss of rental income suffered by the landlord, with the caveat that the landlord must take all reasonable steps to mitigate those damages.
23. I accept the landlord's evidence which shows that they had mitigated their damages insofar as they immediately placed advertisements online in an attempt to secure new tenants. Regarding the change in the monthly rate of rent, the tenant produced no evidence to show that the landlord's failure to secure a new tenant was because the rent was \$100.00 higher than when he resided there. They also testified that they had also rented the unit to the tenant at a rate higher than what he paid during his tenancy, but reduced that rate to \$700.00 as they wanted to keep him as a long-term tenant.
24. I also agree with the landlords that as they were unable to put new tenants in place after the tenant abandoned the property, they suffered a loss of rental income for the months of February, March, April and May 2021. As this tenancy was not set to expire until 30 April 2021, I find that the tenant is responsible for 3 months of lost rental income suffered by the landlord.

Decision

25. The landlord's claim for a payment of rent succeeds in the amount of \$2100.00.

Issue 2: Late Fees - \$75.00

Relevant Submissions

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

Analysis

27. 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.

28. 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.*

29. As the tenant first fell into rental arrears in February 2021, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Cleaning - \$75.00

Relevant Submissions

The Landlord's Position

31. Landlord1 stated that after the tenant moved out, she was required to spend 4 to 5 hours cleaning the kitchen. She claimed that there were grease spots found on the cupboards and inside on the shelves. She also claimed that the refrigerator needed cleaning, that the top of the stove had to be cleaned and that there was dirt found behind the refrigerator.

32. In support of her claim the landlord submitted 47 photographs showing the condition of the refrigerator after the tenant moved out [REDACTED #2].

The Tenant's Position

33. The tenant claimed that he had kept the unit very clean during his tenancy. He stated that when the grease spots were pointed out to him, he offered to help to clean.

Analysis

34. I accept the landlord's claim that the kitchen was not perfectly cleaned after the tenant moved out. Based on the photograph evidence submitted with the application, I find that the landlord is entitled to compensation for 2 hours of her personal labour. Policy with this Section is that a landlord may claim up to \$20.25 for 1 hour of their personal labour.

Decision

35. The landlord's claim for the costs of cleaning succeeds in the amount of \$40.50.

Issue 4: Security Deposit

36. The landlord stated that the tenant had paid a security deposit of \$525.00 on 24 April 2020 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses

37. As the landlord's claim has been successful, the tenant shall pay her hearing expense of \$20.00 for the costs of filing this claim.

Summary of Decision

38. The landlord is entitled to the following:

- a) Rent..... \$2100.00
- b) Late Fees \$75.00
- c) Cleaning \$40.50
- d) Hearing Expenses \$20.00
- e) LESS: Security Deposit (\$525.00)
- f) Total Owing to Landlord \$1710.50

22 October 2021

Date

