

Residential Tenancies Tribunal

Applications: 2022 No. 0295 NL
2022 No. 0419 NL

Decision 22-0295-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 1:35PM on 20 June 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
4. This hearing was postponed twice. An affidavit of service was provided by tenant (T#1) and by the landlord (L#1) confirming that each was served of the claims against them in advance of the originally scheduled 26 May 2022 hearing date. The practice of this tribunal when hearings are postponed, is that notice of the postponement is sent by this office. Proof of such notice relating to a hearing on 13 June 2022 (A# 1) and 20 June 2022 (A#2) is provided.
5. The details of the claim were presented as a month-to-month agreement that began in November 2020, with the tenant taking occupancy on the 6th of the month. The landlord regained possession of the rental unit on 28 June 2021 when the tenant returned keys. Monthly rent was \$750.00 and a security deposit in the amount of \$375.00 was collected. The rental agreement was verbal.
6. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. The standard of proof, in these proceedings, is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

7. The tenant is seeking the following:
 - An order for compensation paid for inconvenience in the amount of \$2,896.23;
 - An order for compensation paid for damages in the amount of \$2,045.00;
 - An order for rent to be refunded in the amount of \$750.00;
 - An order for utilities to be paid in the amount of \$75.00; and
 - An order for the security deposit to be refunded in the amount of \$375.00.
8. The landlord is seeking the following:
 - An order for compensation paid for damages in the amount of \$3,951.00;
 - An order for compensation for inconvenience in the amount of \$700.00;
 - An order for payment of Other in the amount of \$290.00.
 - Validity of termination notice determined;
 - An order for rent to be paid in the amount of \$750.00;
 - An order for utilities to be paid in the amount of \$79.45; and
 - An order for the security deposit in the amount of \$375.00 to be applied against monies owed.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
10. Also relevant and considered in this case are sections 10, 14, 19 and 21 of the *Act* along with the following policies:
 - Residential Tenancies Policy 07-006, Premises uninhabitable
 - Residential Tenancies Policy 9-004 Claims for Damage to Tenant Personal Belongings
 - Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property.

Relevant Background

11. The rental premises is a two bedroom basement apartment in a single family home located at [REDACTED]. The tenant occupied the rental premises with her three dogs, a beagle, a pug/beagle, and a terrier. The presence of the 3 dogs was acknowledged and permitted by the landlord throughout the tenancy as she has dogs of her own in the upstairs unit.
12. The landlord testified that she has owned the residential premises for 7 years and that the property is probably 40 – 50 years old. She testified that she was required to put \$5,000.00 into the basement rental unit about 5 years ago as a result of a bad tenant. The landlord stated that the rental premises is on a

concrete foundation and that the basement is heated by electric heat. The landlord was not certain of the exact floor space of the basement unit, but repeatedly called it a “small unit”. Pictures of the space reviewed during the hearing suggest that the unit is maybe 500-700 with multiple rooms.

13. Both the landlord and tenant acknowledged that there was no dehumidifier in the basement unit. The tenant testified that the landlord kept offering to provide one but never did, and the landlord testified that the tenant bought one at some point and then returned it without using it in the basement. Other questions of general air flow were also brought up during the hearing with the tenant testifying that she was unable to use the rental unit windows.
14. According to the landlord, she rented to the tenant quickly in November 2020 (testifying that the tenant asked her to keep the apartment on 01 November and that she moved in on 06) as evidence that the tenant accepted the rental unit as is. The tenant disputed that she was going to be homeless, and testified that she owns a home elsewhere in the province, she was just needing accommodation in [REDACTED].
15. An anonymous complaint was reported to the [REDACTED] on 15 June 2021 and the rental unit was investigated for mold concerns. The tenant submitted an access to information request related to the inspections conducted at the rental premises and received documentation indicating that there was a “failed inspection” conducted on twenty-second (22nd) and twenty-eighth (28th) of June 2021 (T#00). A “passed” inspection was also noted for 05 October 2021. Of note is that no information is provided in this document on how or why an inspection is “passed” or “failed”.
16. Relevant to the question of mold underlying this tenant’s original claim and the landlord’s claim for compensation, is the inspection note for 28 June 2022 reads as follows:

“Inspection with owner. No significant mold noted. Minor mold around window, a door glazing stop. Owner advised that they removed floor in bedroom as some mold on laminate. Installed a moisture barrier and installed new flooring.....Advised {redacted} formal notice will follow. Only urgent item is smoke alarms as apartment is currently vacant.”

17. The tenant testified that she delayed bringing her claim forward to this tribunal because she was waiting to be seen by an Allergy Specialist. However, this appointment is not scheduled until February 2023. The tenant testified that she has been under medical care since residing in the rental premises, however, no official documentation was provided. The landlord testified that she initially was not going to seek compensation for damages from the tenancy, but that she did in response to receiving the tenant’s application form and notice of hearing.

Tenant Issue # 1: Compensation for Damages (\$2,045.00)

18. The tenant testified and provided screenshots of her Facebook Messenger conversation with the landlord 30 January 2021 where she requests that the landlord look at mold on the bedroom, window, ledge and closet (T#6). The tenant wrote that she "was going to clean it" and testified that she started regularly cleaning mold soon after taking occupancy of the rental unit in November 2020.
19. The tenant testified that she began noting issues of mold in the rental premises as soon as she moved in. She testified that things came to a head and she was required to vacate the rental unit on 30 May 2021. The tenant provided screen shots of communications between herself and the landlord between 30 January 2021 and June 2021 (T#11). A review of these communications indicates that, she and where the tenant reports molds, she also communicates to the landlord that she has cleaned the same mold. Communications from 30 May 2021 onwards indicate respectful engagement from the landlord as she attempted to understand the problem and arrange appropriate solutions.
20. The tenant testified that she temporarily vacated the rental premises on 30 May 2021 due to the mold and that she vacated based on the advice of 811 and her tenant's insurance. The tenant testified that she regularly cleaned and scrubbed the various mold locations, and it was only when she began a deep clean on 28 May 2021 and moved furniture around, that she noticed the reported severity of the mold. The tenant submitted a large amount of photos and videos taken from throughout the rent unit as evidence of the significance of the suspected mold (T#7).
21. The suspected mold was described by the tenant as efflorescence from the concrete foundation of the rental unit, coming through the floors and meeting the moisture of the basement air before turning to mold. Multiple pictures of white powder across the entirety of the laminate flooring was provided (T#7) and the tenant emphasized how, when the bedroom laminate was pulled up, it was evident that the laminate had been laid directly on the concrete foundation. Photographic evidence of staining from the laminate on the ground beneath was also provided (T#8) and the tenant testified that this was evidence that laminate had been laid directly on concrete floor with no installation barrier.
22. The tenant applied for compensation for personal possession damaged by suspected mold in the rental premises. She provided comprehensive evidence and testified that she contacted a mold specialist to seek advice on how to protect her impacted possessions. Through this discussion, she was informed that wood products could be treated, but that fabric based items and particle board items could not be remediated. As such, she was required to take multiple items to the dump. She included the larger items that were trashed on her claim for compensation for damages in the amount of \$2,045.00 (T#2).

23. The following is a list of damaged items:

- Bed mattress/ box spring 10 years old (\$500.00)
- Chair 10 years old (\$200.00)
- Loveseat 10 years old (\$250.00)
- Carry on suit case 10 years old (\$60.00)
- 23 inch suit case 10 years old (\$90.00)
- Wingback chair 10 years old (\$100.00)
- 3 Decorative Pillows new (\$90.00)
- 2 Dog beds New (\$120.00)
- Armoire 8 years old (\$200.00)
- Night table 8 Years old (\$60.00)
- 2 Queen size pillows New (\$70.00)
- Massage Table Unknown (\$150.00)
- Rug New (\$115.00)
- Body Pillow Sentimental (\$20.00)

24. The tenant testified that she was looking for reasonable compensation and submitted proof of recently found prices for similar used items recently available for sale on Facebook Market Place. She also submitted photographic evidence for each of the items damaged (T#3).

25. The tenant called a family member, [REDACTED], as a witness. [REDACTED] testified that he assisted the tenant in mid June 2021 with removing the damaged items and taking them to the dump. He testified that he works in the marine industry and works on ships that have been condemned due to mold. He testified that the day he helped the tenant move the items to the dump, was the first time he attended the rental premises. He testified that he has known the tenant for a long time and that she is not a person who lives in squalor. He testified that the rental unit was not "comfortable" because "you could smell mold".

Landlord's Position

26. The landlord stated her opposition to the tenant calling a family member as a witness.

27. The landlord testified repeatedly that she attributed the source of mold to the three dogs, and the lack of air flow associated with three dogs in a "small unit". The landlord also suggested that the excess plants owned by the tenant would have prevented circulation and caused moisture issues. She submitted a picture of plants nicely arranged on a window ledge (L# 2).

28. The landlord testified that it is common for basement windows to have mold, that she never saw mold elsewhere in her rental unit because it was always cleaned up by the time she saw it. She also testified, that when the tenant reported her concerns with significant mold on 29 May 2022, she responded promptly. The landlord testified that she had her father investigate and a family company

complete the work necessary to pull up the floors and pull out the walls in the main bedroom.

29. The landlord also submitted a series of photos of the tenant's possessions within the rental premises and testified that mold was caused as a result of the tenant's large amount of possession in a small space and general cleanliness habits. She also testified that the items identified as damaged and requiring compensation from the tenant were previously damaged and were not damaged as a result of being in her rental unit. She submitted a series of photos taken of some of the tenant's possession to support this claim (L# 6B and L#6C). A review of the file properties associated with these pictures indicates they were taken on 04 June 2021. The landlord also testified that the tenant was going to throw out her bed anyway and that this meant to her that the bed was not damaged as a result of being in the rental unit.

Analysis

30. According to *Residential Tenancies Policy 9-004 Claims for Damage to Tenant Personal Belongings*, tenants wishing to file a claim for damage to their personal belonging must be able to prove that the landlord was negligent. This means that the tenant is required to prove that the landlord failed to provide and maintain (as is required by 10(1)(1) of the *Act*) a rental premises that was in good a good state of repair and meets the requirements of federal, provincial and municipal laws regarding health, safety or housing.
31. A tenant looking to establish that the landlord has failed to provide such a rental premises, is expected to submit a tenant's request for repairs, for which guidance and a form template is available from this tribunal's website. The tenant in this dispute, did not produce any testimony or evidence to suggest that she submitted such a formal request for repairs.
32. The tenant did however provide a significant amount of evidence to suggest that the presence of suspected mold in the rental premises had a negative impact on both her physical health and the integrity of her possessions while stored in the rental unit. The tenant also justified her requirement to dispose of certain items by:
 - Providing comprehensive pictures of impacted items;
 - Testifying to her regular efforts to clean and maintain her possessions;
 - Testifying to her repeated efforts to maintain the general integrity of the rental unit by cleaning any mold discovered; and
 - Generally establishing that she was a responsible tenant.
33. Specific to the general state of the rental unit at the time the tenant took occupancy and then returned possession of the unit, there was no condition inspection report conducted by either party. If and where the tenant testified that she was required to dispose of possessions that she had while residing in the rental unit, the tenant failed to provide information on:

- Specific proof of purchase for all items claims;
- The state of her items when she moved them into the rental unit; and
- How much compensation she received from her tenant's insurance for items disposed off.

34. As such, the tenant's claim for compensation for damages does not succeed in any amount.

Decision

35. The tenant's claim for compensation for damages does not succeed.

Tenant Issue # 2: Compensation for Inconvenience (\$2,896.23)

Tenant's Position

36. The tenant subpoenaed a witness, [REDACTED] (T# 8). [REDACTED] testified that for him to appear as a witness was a conflict of interest for him because he previously worked for the landlord and works with the tenant. [REDACTED] testified that he has little memory of the rental premises because so much time has passed since he last viewed it, and that he only appeared because he was subpoenaed.

37. [REDACTED] also testified that he is not a contractor or property manager and that he only got involved in the rental premises to assure the tenant that he believed the landlord would do her best to resolve any issues.

38. Related to the mold concern in the basement, [REDACTED] testified that he previously communicated to the tenant that he had been requested by the landlord to check on a prior tenant (not the tenant in this dispute) as there had been a concern with the bedroom of the rental premises. When questioned by the tenant of what he observed in the bedroom, [REDACTED] testified that it "appeared as though the floor was lifting" as a result of moisture and that there was moisture around the windows. The tenant testified that she called [REDACTED] as a witness to establish that there were issues and concerns with moisture and mold in the rental premises prior to her occupancy in the unit.

39. When questioned by the landlord about his original report on the rental premises, [REDACTED] stated that he could not recall and he confirmed that he does not have a background in mold inspection. [REDACTED] also confirmed in response to questioning that based on his previous employment in not-for-profit housing, it is common to see moisture and mildew around windows in basement apartments in Newfoundland and Labrador.

40. The tenant submitted a comprehensive break down of compensation sought for inconvenience from her time in the rental unit (T#9). These included:

- Air B&B = \$1,500.00
- 5 Days Sick Days = \$754.45
- 4 bottles Clorox cleaner = \$27.96
- Neti Pot and Sinus rinse = \$38.98
- Medicine = \$80.00
- 7 Months of Claritin \$167.93
- Vileda brook dustpan set = \$33.72
- Vileda mop and bucket = \$23.94
- Boxes = \$57.96

41. Regarding her claim for compensation for the costs of the Air B&B, the tenant submitted a copy of the paid invoice in the amount of \$1,500.00 for accommodations from 01 June through to 14 July 2021 (T#10). She also submitted screenshots of her conversations with the landlord from the time she reported the significant mold on 29 May 2021 through to her departing from the rental unit for other accommodation (T#11). The tenant writes in these messages how this new mold is different than the mold she had been "*maintaining on the ledge and windows*" and that "*I know now why my allergies have been so bad*".

42. The tenant testified that she was required to vacate the rental premises because she spent the day cleaning in response to the mold identified on 29 May 2021. She testified that she then fell significantly ill and called 811 who advised her to vacate the rental premises and that this advice was seconded by her insurance company. The landlord and tenant agreed that the landlord provided the tenant with \$290.00 to account for an intended "½ the costs of alternative accommodation" from 30 May 2021 onward while the mold issue was investigated.

43. Regarding the five sick days claimed by the tenant, she submitted evidence of her timesheet from work where she claimed 5 sick days between 31 May 2021 and 15 June 2021 to deal with the home and get things packed up. She also submitted a copy of her pay cheque from this period to suggest that she does not get paid for sick days and also clarified that none of the days claimed were claimed so that she could attend medical or other specialist appointments (T# 12, T# 13).

44. Regarding the tenant's claim for the costs of medical supplies, she testified that she has been under medical supervision as a result of mold exposure, but did not provide written documentation from medical providers regarding this exposure, its risks, or its consequences.

45. Regarding the assorted cleaning supplies and materials claimed by the tenant, she submitted screenshots of advertised costs for each item, but did not provide receipts or invoices related to her purchase of each (T#14).

46. Regarding the tenants claimed costs for moving boxes, she provided an invoice dated 10 June 2021 in the amount of \$57.16 (T# 15) and testified that the evidence of the damaged boxes were provided in other pictures submitted (T#14). The tenant testified that she had to dispose of her previous moving boxes due to mold concerns and was required to purchase new boxes.
47. The tenant referenced the access to information document introduced in paragraph 18 and 19 to emphasize that the landlord's unit remained uninhabitable even after the landlord responded to the tenant's concerns for mold in the bedroom of the rental premises.

Landlord's Position

48. Regarding the tenant's claim for compensation for inconvenience for the total costs of seven weeks at an Air B&B, the landlord testified that she promptly organized repairs and informed the tenant on 03 June 2021 that the unit will be ready for the tenant's return on 04 June 2021. Dated proof of this exchange was submitted (L# 8). Regarding the tenant's larger claim for inconvenience, the landlord repeatedly testified that any mold in the rental unit was caused by the tenant's dogs and by the tenants living habits and lack of regularly cleaning.

Analysis

49. A review of text messages provided from both sides indicated that the landlord appeared engaged and focused on understanding the problems and finding solutions. She also appeared to readily acknowledge the likelihood of mold as well as any impacts of this mold for the tenant.
50. Regarding the tenant's claim for \$1,500.00, she does not appear to have subtracted the \$290.00 that she received from the landlord for alternative accommodation while the basement mold was being investigated from her total claim. Nor did the tenant provide this tribunal with any information related to compensation she may or may not have received from her tenant's insurance. Considering that the tenant testified how a representative from her tenant's insurance company advised her to vacate the rental premises, her receiving some compensation for having to reside outside of the rental premises could be expected.
51. Furthermore, where the tenant and landlord agreed to alternative accommodation for the duration that work was underway at the rental premises, there was no evidence that they agreed that the tenant was required to reside elsewhere for the full month of June, let alone through to the middle of July 2021. As such, I find that the tenant's claim does not succeed beyond the \$290.00 that was previously paid by the landlord and received by the tenant.

52. Regarding the tenant's claim for compensation for sick days taken and medical supplies required, I find that she did not provide sufficient evidence for establishing that these costs were directly associated to her experience with the rental premises. For instance, no medical note was provided by a doctor confirming the tenant's medical requirements as a result of any mold exposure while residing in the rental premises. The tenant also testified that she claimed sick time so that she could deal with the rental unit, moving items in and out and moving to the Air B&B.
53. Regarding the tenant's claim for cleaning supplies, the tenant did not adequately establish that these items indeed new and purchased specifically for use in the rental premises as a result of mold as no receipts were provided. For instance, tenants are generally expected to provide their own cleaning supplies and tools for their rental units. The tenant also did not establish that the landlord required her to clean any mold discovered. Nor did she provide sufficient proof to establish that she was entitled to costs for new moving boxes.

Decision

54. The tenant's claim for compensation for inconvenience does not succeed.

Tenant Issue #3: Rent Refunded (\$750.00)

Tenant's Position

55. The tenant testified that she was seeking a refund of rent for her final month in the rental unit since she was not able to actually occupy the rental unit. As evidence of this she referenced the inspection summary report (previously mentioned in paragraph 18 and 19) of the rental premises and highlighted how the inspections were "failed".
56. The tenant also referred to her video evidence from 15 June 2021 (T#5) to highlight how the mold had returned and construction debris was everywhere when she attended the rental premises on 15 June 2021. The tenant argued that this was also evidence that her rental unit was not fit for habitation.

Landlord's Position

57. The landlord testified, that "*at no point did I ask [the tenant] to leave*" and emphasized her timeliness in organizing a quick response and remediation of the tenant's mold concerns reported to her on 29 May 2021. Regarding the tenant's reference to city inspections conducted at the rental unit, the landlord testified that she was not at any point told that her rental unit was uninhabitable. She also testified, that had the tenant indicated that she would be returning to reside in the rental unit, that any items identified by the inspector would have been completed by the next day.

Analysis

58. The tenant requested that rent be returned for her final month (June 2021) because the rental unit was not habitable. The landlord disagreed with this assessment. No evidence was provided by appropriately qualified inspectors from on 04 June 2021, the day the landlord testified the rental unit became available again for the tenant, suggesting or indicating the rental unit was uninhabitable.
59. According to *Residential Tenancies Policy 07-006, Premises uninhabitable*, a report from an authoritative body is required before a premises is shut down for safety reasons. No such report was provided. All that was provided was an inspection note from 28 June 2021, which as read as previously captured in paragraph 19 “no significant mold noted”. Where the tenant testified that the “failed” status associated with this 28 June 2021 inspection was proof of uninhabitability, I note that the inspector also used the “failed” status against his unsuccessful attempt to inspect the rental premises on 22 June 2021 because the landlord was not present. Consequently, I give no weight to this “failed inspection status.
60. Meanwhile, the tenant acknowledged that she removed her items from the rental premises on 15 June 2021 and did not return keys to the landlord until 28 June 2021. As such, she retained possession of the unit for the same time period that she sought the return of rent. This was contradictory behaviour fails to establish the tenant entitlement to any refund of rent.

Decision

61. The tenant’s claim for return of rent does not succeed.

Tenant Issue 4: Refund of Utilities Paid (\$75.00)

Tenant’s Position

62. The tenant acknowledged that she removed her name from the NL power account for the rental unit on the day specified by the landlord. She submitted her own utilities worksheet (T#15) along with records of her invoices from NL Power dated 05 May 2021(T#16) and 16 June 2021 (T#17). As per the worksheet provided, the tenant is seeking payment of \$75.00 for compensation for utilities paid from 01 June 2021 through to 16 June 2021, the day she removed her name from the account.

Landlord's Position

63. The landlord testified that the tenant removed her name from the utilities account with Newfoundland Power on 16 June 2021 despite not returning the keys to the rental unit until 28 June 2021.

Analysis

64. Regarding the tenant's claim for compensation for utilities paid, I find her claim inappropriate for two reasons:

- She removed her name from the utility account prior to returning keys
- She was seeking compensation for utilities paid during the time she retained possession of the rental unit.

Decision

65. The tenant's claim for compensation for payment of utility bills does not succeed.

Landlord Issue # 1: Compensation for Damages (\$3,951.00)

Landlord's Position

66. The landlord submitted a worksheet related to her claims for compensation for damages (L# 3). From this claim of \$3,951.00 she was seeking \$400.00 in damages for cleaning and because the hourly rate for cleaning was \$40.00, the landlord estimated that 10 hours of work was required. However no receipt was provided.

67. The landlord submitted a series of approximately 50 photos said to be taken throughout the rental premises after the tenant vacated (L#4). A review of these photos indicates some dust and dog hair throughout multiple locations in the apartment along with the construction debris that had also been captured by the tenant's video along with a fridge interior that needed scrubbing.

68. I note that file properties associated with these pictures indicate that the photos were taken on 05 July 2021, nearly three weeks after the tenant vacated the rental unit. The landlord also commented on the number of nails and nail holes she noted in the rental premises, but provided no specific data on how many nails or nail holes existed in the rental unit prior to the tenant taking occupancy.

69. The remainder of the landlord's \$3,551.00 damage claim related to work done in the main bedroom of the rental unit in response to the Facebook message received from the tenant on 29 May 2021 documenting her concerns with

significant mold in the bedroom (L#5). The majority of the work costs were \$2,600.00 for expedited labour costs, and the remaining \$951.00 was materials.

70. The landlord submitted a series of photos relating to work completed (L#6A), but did not provide an invoice or receipt for the work or materials. She testified that the work was completed by a family company (L#6B). She also submitted a series of photos as proof of what appeared to be the clean and tidy state of the repaired bedroom on 04 June 2021. The landlord also submitted a series of photos of the tenant's possessions within the rental premises and testified that mold was caused as a result of the tenant's large amount of possessions in a small space and general cleanliness habits (L# 6B and L#6C). A review of the file properties associated with these pictures indicates they were taken on 04 June 2021.
71. The landlord testified that she has receipts available, but did not submit them because she has been busy working. She also testified that she was seeking compensation for this work because her insurance claim was denied "since there was no actual evidence of mold". However, no documentation related to this rejected insurance claim was provided.

Tenant's Position

72. The tenant disputed the claims that she left the rental unit dirty but acknowledged that she was unwell and may not have cleaned to the best of her ability. She testified that she cleaned extensively when she first took occupancy and testified throughout the hearing of her dust allergy, how she cleaned regularly, at least once a week, and how her three dogs were never left wet. The tenant testified that any nail holes were made with the permission of the landlord's father who supported her installation of shelving.
73. The tenant submitted two videos of her final day, 15 June 2022 in the rental premises. The first video was the rental premises when she returned after vacating to the Air B&B and found evidence of construction debris throughout (T#4). The second video (T#5) was a follow up video walk through of the rental unit of the rental premises.
74. This second video depicted a clean apartment and included multiple close ups of suspected mold along the perimeter of the floors along with assorted construction debris in the bedroom that had been renovated due to the mold concerns. The tenant speaks in the video to say "*I have not been in this room, I am not cleaning up somebody else's mess*". The tenant testified during the hearing that she did not scrub or wipe down surfaces where mold had grown in her absence (between 30 May and 15 June) because she was previously informed by 811 to limit her mold exposure.

Analysis

75. The applicant in any damage claim is required to provide and speak to the evidence (witness, documentary, or recorded) necessary to establish on the balance of probabilities that:
 - That the damage they are claiming compensation, exists;
 - That the respondent is responsible for the reported damage through a willful or negligent act; and
 - The value to repair or replace the damaged item(s).
76. If and when damaged items pass the validity test of damages based on the balance of probabilities, actual compensation amounts are calculated in accordance with *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*. According to this policy, higher compensation is awarded for damage of newer items, less compensation is awarded for items considered to have exceeded their serviceable life.
77. Specific to the general state of the rental unit at the time the tenant took occupancy and then returned possession of the unit, there was no condition inspection report conducted by either party. The two parties also disputed why and how the tenant first took occupancy and then later vacated the rental premises.
78. The landlord made clear throughout her testimony that she did her due diligence to respond to mold and habitability complaints and testified that when there was no mold discovered, that she was due compensation for the costs she incurred.
79. Regarding the landlord's claim for compensation for cleaning in the amount of \$400, I was provided with the following evidence of the rental unit:
 - photographic evidence from the landlord on 04 June 2021
 - video evidence from the tenant dated 15 June 2021 and
 - photographic evidence from the landlord dated 05 July 2021.
80. The tenant explained in the 15 June video that she did not clean construction debris or scrub mold, both of which seemed reasonable considering that she vacated the rental premises due to mold concerns. That said, the rental unit appeared to be a reasonable and considerate state upon the tenant's departure.
81. Photos submitted from the landlord from nearly 3 weeks later, depicted more dust, hair and possible mold throughout the unit as well as evidence of a fridge that needed scrubbing. Where the additional dust and hair could be expected to accumulate in 3 weeks time, the state of the fridge would not have changed during that time. As such, I find it reasonable for the landlord's claim for cleaning to succeed for two hours of cleaning, which according to *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property* can be claimed in the maximum amount of \$21.20 per hour.

82. Regarding the landlord's claim for compensation in the amount of \$3,551.00 (\$2,600.00 labour and \$951.00 materials) to account for costs incurred when responding to the tenant's concerns for significant mold in the bedroom, I note that landlords are obligated to investigate under the Act, **Statutory Condition 1** under subsection 10(1) of the Act reads as follows:

1. Obligation of the Landlord -

(a) The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.

(b) Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.

83. Accordingly, if and where risks to habitability exist, the landlord is obligated to respond, which the landlord did in this case and had originally intended to not seek compensation from the tenant. The landlord even testified in paragraph 18 that she only submitted her counter claim for compensation after receiving notice of the tenant's claim.

84. In submitting her own claim however, the landlord failed to submit sufficient evidence to establish that negligence of the tenant in any way contributed to the situation in her rental premises that led to her family company completing the claimed renovation work. The landlord also failed to submit complete documentation related to work conducted. As such, her claim for compensation for damages related to the repair work that occurred in early June 2021 does not succeed in any amount.

Decision

85. The landlord's claim for compensation for damages succeeds in the amount of \$42.40 (2 x \$21.20).

Landlord Issue # 2: Compensation for Inconvenience (\$700.00 + \$290.00 Other)

Landlord's Position

86. Regarding her own claim for compensation of inconvenience, the landlord testified that she lost a two day teaching engagement because of her prompt response to the mold concerns reported by the tenant on 29 May 2021. As proof

of this lost revenue, the landlord submitted a copy of two day Contract Trainer Agreement for 02 June 2021 and 09 June 2021 with identified compensation of "\$700.00 plus applicable taxes" (L#7). However, no documentation related to any formal cancelation of this teaching engagement was provided.

87. Regarding her claim for compensation for **Other** in the amount of \$290.00, the landlord testified that she wanted the money she had advanced to the tenant for alternative accommodations returned. The landlord testified that the *Residential Tenancies Act* only requires the landlord to provide alternative accommodation if and where the rental unit is deemed uninhabitable, which this rental unit never was. As such, she requested that the money she advanced be returned.
88. Regarding the tenant's claim for compensation for inconvenience for the total costs of seven weeks at an Air B&B, the landlord testified that she promptly organized repairs and informed the tenant on 03 June 2021 that the unit will be ready for the tenant's return on 04 June 2021. Dated proof of this exchange was submitted (L# 8).

Tenant's Position

89. The tenant did not provide specific testimony related to the landlord's claim for compensation for inconvenience in the amount of \$700.00.

Analysis

90. A review of text messages provided from both sides indicated that the landlord appeared engaged and focused on understanding the problems and finding solutions. She also appeared to readily acknowledge the likelihood of mold as well as any impacts of this mold for the tenant.
91. Regarding the landlord's claim for compensation for **Other** in the amount of \$290.00, this was for the return of money she freely gave to the tenant. The landlord failed to establish why this money should be returned.
92. Regarding her claim for compensation in the amount of \$700.00 for a lost contract while she was responding to the tenant's mold concerns, she did not provide actual evidence that she was required to cancel this contract. As such, her claim for compensation does not succeed.

Decision

93. The landlord's claim for compensation for inconvenience does not succeed.
94. The landlord's claim for Other does not succeed.

Landlord's Issue # 3: Validity of Termination Notice

Landlord's Position

95. The landlord referred to an email she received from the tenant on 04 June 2021 where the tenant wrote: *“As we discussed on 01 June 2021, I am still looking for other living arrangements and will be moving on at the end of this month’s rent.....It’s been a lot with the mold and I’m still recovering.....As June’s rent is paid I will be taking the rest of this month...”* (L#9). Of note, is that the landlord’s response to this email was also provided, where she wrote: *“Sorry to hear that you’ve decided to move on, but also understand that you need to do what’s best for you. Of course, I wish you and the pups all the best.”*

96. Because this email was received on 04 June 2021 and the landlord testified that the rent cycle ran from the first of the month, the landlord testified that this was insufficient notice of termination. The landlord testified that she did all that she could to respond to mold concerns and that she never once asked the tenant to leave the rental premises. The landlord also denied that a conversation occurred between herself and the tenant on 01 June 2021 suggesting that the tenant would be permanently vacating the rental premises.

Tenant's Position

97. The tenant testified that she considered the email notice on 04 June 2021 to be sufficient because her rental period ran from the 6th of each month. The tenant emphasized how she also wrote in the same email referenced above *“Although you said the apartment should be clear today (Friday June 4th) it’s going to take some time to clean all my stuff up from the dust and mold, and some of my belongings will have to be desposed (sic) of due to mold damage”*. The tenant emphasized this to illustrate that she was not able to reside in the rental premises anyways.

Analysis

98. I accept that continued concerns with mold led the tenant to provide notice of termination of her tenancy and that she paid rent for her final month (June 2021). However, I also acknowledge that the tenant did not provide official legal notice of her intention to terminate her month-to-month tenancy in the rental unit. As such, where I do not consider the termination notice provided to be a valid notice by itself, but I also acknowledge the landlord’s acceptance of the same notice. No evidence was provided to suggest that the landlord contested the notice she received. Proof of this acceptance was provided in writing.

Decision

99. The tenant’s notice to terminate became a valid notice to terminate once it was accepted by the landlord.

Landlord Issue #4: Rent Paid (\$750.00)

Landlord's Position

100. The landlord testified that she is seeking rent for the month of July 2021 because the tenant gave inadequate notice of termination in June 2021. The landlord stated that the tenant's rental period is from the first to the month and the last of the month and provided evidence of email she received on 04 June 2021 where the tenant confirmed with the landlord that she would be vacating the rental premises at the end of June 2021 (L#9).
101. Because the rental period ran from the first of the month, the landlord considered this inadequate notice of termination. The landlord also testified, that "*at no point did I ask [the tenant] to leave*" and emphasized her timeliness in organizing a quick response and remediation of the tenant's mold concerns reported to her on 29 May 2021.

Tenant's Position

102. The tenant disputed the landlord's claim for rent for the subsequent month of July 2021 by highlighting the failed inspection report from the city, and specifically referenced to where it was written (see paragraph 19) that there was no urgency in responding to issues because the unit "was not occupied" at the time (T #5). The tenant testified that this was significant because it meant that the rental premises was not habitable during the time that she was seeking a rental refund for June 2021 and the landlord was seeking payment of rent for July 2021.

Analysis

103. As previously discussed in paragraph 101, the tenant's notice to terminate became a valid notice to terminate effective 30 June 2021 once it was accepted in writing by the landlord. As such, the landlord's claim for missing rent for the month of July 2021 does not succeed.

Decision

104. The landlord's claim for rent does not succeed.

Issue 5: Utilities Paid \$79.45

Landlord's Position

105. The landlord testified that the tenant removed her name from the utilities account with Newfoundland Power on 16 June 2021 despite not returning the keys to the

rental unit until 28 June 2021. The landlord submitted a typed Utility ledger that specified she was seeking the following compensation (L#10):

- NL Power Bill June 16-July 6 = \$36.45
- NL Power Bill July 6 – 31 = \$43.00

106. Copies of actual utility bills were provided as part of the above referenced L#10.

Tenant's Position

107. The tenant acknowledged that she removed her name from the NL power account for the rental unit on the day specified by the landlord.

Analysis

108. The landlord established on the balance of probabilities that she incurred unexpected costs for utilities during the later half of June 2021 after the tenant removed her name from the utility account. As such, I find that the landlord's claim for compensation for utilities succeeds for the remainder of June 2021 (e.g., June 16 – 30) but not for July as it has already been discussed how the landlord accepted a termination notice from the tenant effective 30 June 2021.

109. Please refer the following calculations to understand how the entitlement for compensation was calculated:
\$36.45 invoice for June 16 – July 6 (21 days)
\$36.45/21 = \$1.74 per day
June 16 – June 30 = 15 days
\$1.74 x 15 = \$26.10 (compensation entitlement)

Decision

110. The landlord's claim for compensation payment of utility bills succeeds in the amount of \$26.10.

Landlord and Tenant Issue 1: Security Deposit

Relevant Submissions

111. Evidence of a \$375.00 security deposit having been collected was provided by the landlord (L# 11) and the tenant (T#18).

112. The tenant submitted an email received from the landlord on 09 July 2021 where she wrote that she "*will retain the damage deposit to cover the costs associated with incomplete cleaning and damage repairs*" because she believed the tenant did not leave the rental unit in "*as good or better*" condition (T#19). The landlord provided similar testimony during the hearing.

Analysis

113. Section 14, sub 10, 12 and 14 of the *Residential Tenancies Act, 2018* states:

(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.

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

(14) Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.

114. The landlord and tenant disagreed on how to dispose of the security deposit. The tenant wanted to have it refunded and the landlord wanted to keep it. The

landlord did not however submit an application to this tribunal back in July 2021 when she initially stated her desire to retain the full amount of the \$375.00 security deposit collected. As noted in subsection 14(12) of the Act above, a *"landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant"*.

115. Where the landlord's claim for compensation has succeeded in the amount of \$68.50 (\$42.40 + \$26.10) for payment of utilities and damages, she is entitled to retain that portion of the security deposit. The remaining \$306.50 must be returned to the tenant.

Decision

116. The landlord's application to retain the tenant's security deposit succeeds in the amount of \$68.50.

117. The tenant's application for return of her security deposit succeeds in the amount of \$306.50.

Summary of Decision

118. The landlord is entitled to retain \$68.50 of the \$375.00 security deposit collected from the tenant.
119. The tenant is entitled to the return of her remaining security deposit in the amount of \$306.50.

19 July 2022

Date


Jaclyn Casler
Residential Tenancies Board