

Residential Tenancies Tribunal

Application 2022 No. 885NL
Application 2022 No. 967NL

Decision 22-0885-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:11 AM on 19 December 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. The respondent, [REDACTED] was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord".

Issues before the Tribunal

3. The tenant is seeking an order for refund of security deposit in the amount of \$626.94.
4. The landlord is seeking an order for a payment of \$626.94 in compensation for damages.

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 case is section 14 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises

Issue 1: Compensation for Damages - \$626.94

Relevant Submissions

The Landlord's Position

7. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant, commencing 01 June 2022, and a copy of the executed lease was submitted with her application. The agreed rent was set at \$1000.00 per month and it states in the lease that the tenant was responsible for paying for her own utilities, including heating oil. It is also acknowledged in the lease that the tenant had paid a security deposit of \$750.00.
8. In July 2022, the tenant issued the landlord a 2-month termination notice, and she vacated the property on 01 September 2022.
9. According to the landlord's application, after she had regained possession of the property, she incurred the following costs:
 - Harvey's Oil charge to bleed tank \$124.07
 - Oil delivery to 1/4 tank..... \$402.87
 - Cleaning \$100.00

Total..... \$626.94

As such, shortly after the tenant moved out, the landlord refunded to her \$123.06 of the \$750.00 security deposit.

Bleed tank

Oil delivery

10. Before the tenancy began, on 20 May 20202, the landlord and the tenant conducted a walkthrough of the property and they both signed a Rental Unit Condition Report that was compiled at that time, and submitted with the landlord's application. According to that report, the oil tank was 1/4 full at that time.
11. The landlord argued that as this tank was 1/4 full when the tenancy began, it ought to have been at the same level when the tenant moved out. However, when she regained possession of the property just 3 months later, the tank was empty. Before she could have the tank refilled, the oil company first had to bleed the lines, and she submitted an invoice with her application showing that she was charged \$124.07 for that service. She also pointed to a second invoice showing that she was charged \$805.75 to then have the tank refilled. The landlord corrected her claim at the hearing and stated she was not seeking half of the costs of filling the tank, as claimed—\$402.87—but rather just a quarter of that amount.

Cleaning

12. The landlord stated that when the new resident of the apartment moved in, he reached out to the landlord and complained that there was a smell of cat urine in the apartment and he also stated that some cleaning was required. The landlord pointed to the outgoing Condition Report in which it was noted that the windows sills were dirty, the bathtub needed cleaning, the side of the refrigerator was dirty, and there were several light bulbs missing.
13. The landlord stated that this new resident was given a \$100.00 credit towards his rent as he carried out this cleaning himself. The landlord did acknowledge, though, that on the outgoing Condition Report there was no mention of any smell of cat urine, and she does not believe that this is something the tenant should be liable for.
14. No photographs were submitted by the landlord showing the condition of the unit after the tenant vacated.

The Tenant's Position

15. The tenant acknowledged that she had signed the Condition Report indicating that there was the oil tank was 1/4 full. She claimed, though, that she was not satisfied that the tank was actually filled with oil, and she made inquiries with the landlord after she moved in seeking evidence to establish that there was oil in the tank, and not water. She also suggested that the tank may have not been 1/4 full and claimed that this number was arbitrarily put in the Report.
16. The tenant also argued that she is not responsible for these costs as she had not turned on the heat at the unit during her tenancy, and she also claimed that she had not used any hot water as she was showering at a different location.
17. Furthermore, the tenant claimed that the landlord had not, in fact, incurred the costs she is claiming here. She pointed out that the documents submitted by the landlord are merely invoices, and not receipts for payments. As well, the tenant had obtained records from the landlord's oil company, as well as from the occupant who moved into that apartment after her. The tenant pointed out that, according to the records from the landlord's account, although the landlord was charged \$805.75 for oil and \$124.07 for bleeding the lines, she had only paid that latter amount. And with respect to the new occupant of that apartment, those records show that he was billed for \$702.98 for an oil delivery on 08 September 2022, and that that amount was then paid on 13 September 2022. The tenant argued that this shows that the new occupant actually paid for the oil, not the landlord.
18. With respect to the actual payment the landlord had made—the \$124.07 for the costs of bleeding the lines—she argued that she should only have to pay 1/4 of that amount as the tank was only 1/4 full.

Cleaning

19. The tenant stated that she has never owned a cat and she reiterated the landlord's claim that there no mention of any smell in her unit when she vacated.
20. With respect to the lightbulbs, the tenant claimed that several bulbs were missing when she moved in and the landlord had informed her at that time that she was responsible for replacing those herself. She argued that the landlord had not incurred any costs to replace lightbulbs as these are purchases the new resident would have made.
21. Regarding the remaining cleaning, the tenant claimed that she had cleaned the window sills, and she pointed out that no evidence was submitted by the landlord showing otherwise. She also argued that if any further cleaning was required, it should be chalked up to normal wear and tear.

Analysis

22. The submitted Condition Report was signed by both the landlord and the tenant on 20 May 2022. By signing that report, I find that the tenant has acknowledged that that report accurately reflects the condition of the property when she moved in, and in particular, I find that it establishes that the oil tank was 1/4 full on that date. The lease submitted by the landlord shows that the tenant was responsible for paying for the heating oil during her tenancy, and I accept the landlord's claim that the tenant was to ensure that the tank was 1/4 full when the tenancy ended. The tenant acknowledged that she had put no oil in the tank during her tenancy, and given that testimony, it seems very likely that it would have run dry by the time she moved out.
23. I accept the landlord's claim that the lines to the tank had to be bled after it had run dry, and as the tenant had allowed this to happen, I find that she is responsible for those costs—\$124.07.
24. The tenant is correct to point out that there is a difference between an invoice and a receipt of payment, and her evidence does show that, as of 15 December 2022, the landlord had only paid for the bleeding of the lines, and not the oil delivery. But this distinction, the distinction between an invoice and a receipt, would not affect my decision as to whether the tenant owes the landlord any compensation. If that invoice has not yet been paid, it is still a charge that the landlord is responsible for, and she will have to pay it at some point in the future.
25. The tenant's submitted evidence does show that an order was placed with this oil company, on 08 September 2022, for a delivery of \$702.98 in oil, and that that delivery was paid for a few days later. However, I do not accept the tenant's claim that this shows that the new resident had paid for the oil that the landlord had delivered on 06 September 2022. I don't buy that view because these deliveries were made on different days, and the amounts charged, and presumably the amount of oil in each delivery, are different.

26. But, if the tank was fully filled on 06 September 2022, as the landlord asserted at the hearing, why had the new resident ordered another delivery 2 days later? What has been overlooked in this telling is that, in Newfoundland, the average size of a household oil tank is just over 900 liters.
27. Keeping that in mind, the following seems to be more probable. After the tenant moved out, the landlord had to have the lines bled and she purchased 450 litres of heating oil, for which she was charged \$805.75. This means that the landlord was charged about \$1.79 per litre of oil, which was actually the going rate of home heating oil at that time¹. If this tank was of average size, it was now half full. The tenant's evidence shows that a further \$702.98 was purchased just 2 days later, which I calculate to be approximately 393 liters, making the tank just about full. On this account, all the tenant's evidence shows was that this new tenant was provided with a 1/2 tank of oil at the beginning of his tenancy, and he decided to have it fully filled just a few days later.
28. As the tenant had let the tank run dry, and as she was supposed to return to the landlord a tank that was 1/4 full, I find that the landlord is entitled to \$402.87, as initially claimed on her application (\$805.75 for a 1/2 tank of oil ÷ 2).
29. Regarding the cleaning, I accept the tenant's claim that she did not keep a cat at the unit during her tenancy, and that point was conceded by the landlord. Regarding the remaining items, I find that the landlord has presented insufficient evidence to establish that the tenant was responsible. No pictures were submitted with her application, the tenant had not signed off on the outgoing portion of the Report, and on examining the incoming portion of this Report, it appears as if the unit needed cleaning when the tenancy began. As such that portion of the landlord's claim does not succeed.

Decision

30. The landlord's claim for compensation for damages succeeds as follows

• Harvey's Oil charge to bleed tank	\$124.07
• Oil delivery to 1/4 tank.....	\$402.87
Total.....	<u>\$526.94</u>

Issue 2: Hearing Expenses

31. The tenant submitted a receipt with her application showing that she was charged \$20.00 to file this application, and a second receipt showing that she was charged \$14.88 to send the application to the landlord by registered mail.

¹ https://ycharts.com/indicators/st_johns_nl_average_retail_price_for_household_heating_fuel

32. Policy with this Section is that the party that receives an award shall have their hearing expenses awarded also. But it is also policy that where the award is less than the amount of the security deposit, the filing fee cannot be claimed. As such, the tenant's claim for hearing expenses succeeds in the amount of \$14.88, only.

Issue 3: Security Deposit

33. The tenant had paid a security deposit of \$750.00 on 16 May 2022, and a few days after she vacated, the landlord had returned to her \$123.06, leaving a balance of \$626.94. As the landlord's claim for compensation for damages has been partly successful, the remainder of that deposit shall be disposed of as follows:

a) Refund of Remaining Deposit	\$626.94
b) Hearing Expenses	\$14.88
c) LESS: Compensation for Damages	
(\$526.94)	
d) Total Owing to Tenant.....	<u>\$114.88</u>

06 January 2023

Date

John R. Cook
Residential Tenancies Tribunal

