

Residential Tenancies Tribunal

Application 2024-0258-NL & 2024-0383-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 17-June-2024 at 9:04 am.
2. The applicant, [REDACTED], hereinafter referred to as the tenant, attended via teleconference, along with her representative [REDACTED].
3. The respondent, [REDACTED], was represented at the hearing by [REDACTED] and [REDACTED], who attended via teleconference.

Preliminary Matters

4. Parties agreed that the landlord refunded \$87.89 to the tenant before the date of the hearing.
5. The landlord indicated they were not served by the tenant at least 10 days prior to the hearing date. However, they elected to waive their right to service to have the matter proceed. The tenant indicated they received notice of the counterclaim more than 10 days prior to the hearing.

Issues before the Tribunal

6. Should the landlord's claim for unpaid rent be granted?
7. Should the landlord's claim for damages be granted?
8. Should the landlord's claim for other moneys owed be granted?
9. Should the tenant's claim for a refund of rent be granted?
10. Should the tenant's claim for compensation for inconvenience be granted?
11. What is the proper disposition of the security deposit?

Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the Act).

Issue 1: Unpaid Rent

Landlord's Position

13. The landlord testified that the monthly rent of \$875 was charged to the tenant on 1-August-2023. No rental ledger was provided but see LL#1. They testified that only \$367 was received towards the amount owed. On their application, they applied for rent to be paid in the amount of \$84.61. It was submitted that the tenant's rent was subsidized by Newfoundland and Labrador Housing Corporation (NL Housing). An email conversation (LL#2) was provided where the landlord and NL Housing agreed that the tenant would be responsible for returning the keys and would be responsible for paying rent, on a pro-rated basis, until the date the keys were returned. The landlord testified that they were returned on 16-August-2023.

Tenant's Position

14. The tenant testified that she was only in the apartment the first night of August. She says the building manager was not present for the first two weeks of August and so she gave the key to a neighbour to return it for her when he returned.

Analysis

15. The landlord provided a transcript (LL#1 page 1) of a voice message they testify they received from the tenant on 14-August-2023. In it, the tenant appears to express an intent to give the building manager the keys the next day, 15-August-2023. The tenant agrees she said this but remembers it as being on or about 2-August-2023.
16. Considering the evidence in its totality, I find on a balance of probabilities that the tenant did not vacate until 16-August-2023. I find the most likely explanation is that the tenant misremembered the date. The tenant owes rent until the date of 16-August-2023.
17. The correct formula for calculating a daily rate to pro-rate rent is to multiply the monthly rent of \$875 by the 12 months of the year and divide by the 366 days of this year. $\$875 \times (12 \text{ months} / 366 \text{ days}) = \sim \$28.69/\text{day}$. The correct total of rent owed for the month of August is \$459.02. Subtracting the \$367 which was already paid results in a new total of \$92.02. This is in excess of the amount claimed, but only by a small amount. Accordingly, \$92.02 is owed by the tenant to the landlord.

Issue 2: Damages

Landlord's Position

18. The landlord seeks \$175.00 in damages. This consists of 4 hours of cleaning at \$25/hour, as they say the apartment was left in an unclean state, and \$75 for garbage

removal. Photos (LL#3) were provided of the state of the apartment after the landlord retook possession. These photos indeed show a moderate level of uncleanliness. Nothing egregious is shown but some fixtures would benefit from a thorough scrubbing, and streaks on what appear to be grease are visible in the kitchen. There is a small amount of garbage visible. I estimate it would fill less than one large grocery bag.

Tenant's Position

19. The tenant testified that she cleaned the apartment as best she could. She admitted the oven was dirty because she was unable to clean it due to her disability. She testified that she sometimes had nursing assistants visit her, and they would help her clean at times. When she reviewed the photos, she testified that the apartment was not as dirty as the photos showed. She suggested that if the nursing assistants who had been helping her had left the premises in the state shown, they would have been fired.

Analysis

20. Considering the evidence in its totality, I find that the tenant left the apartment in a somewhat unclean state. As I stated above, I find the photos show only a moderate level of uncleanliness. They justify four hours of cleaning. The garbage justifies an additional hour of cleaning. Self-labour is awarded at a rate of minimum wage + \$8/hour, a rate which currently equals \$23.60/hour.
21. The landlord's claim for damages is successful in the amount of \$118.00.

Issue 3: Other Moneys Owed

Landlord's Position

22. The landlord seeks an additional \$35.50 administration fee. The landlord testified this is a 20% fee applied on all charges pursuant to Appendix B of the lease agreement. No copy of the lease agreement was provided.

Tenant's Position

23. The tenant did not agree the 20% fee was a term of the lease. Indeed, she seemed confused by the charge and started the hearing by asking the landlord's representatives to explain it.

Analysis

24. The landlords say there was an agreement to add 20% to move out charges. The tenant does not agree. No additional evidence was presented.
25. In the absence of documentary evidence, I am not prepared to find such an agreement existed on a balance of probabilities. This part of the landlord's claim fails.

Issue 4: Rent Refund

Tenant's Position

26. The tenant seeks a refund of rent for the \$367 she paid for the month of August. She says she only stayed there one day.

Landlord's Position

27. The landlords maintain that the tenant did not move out until 16-August-2023, and therefore is not entitled to a refund of rent.

Analysis

28. As discussed under issue 1, the facts I have found do not support a refund of rent.
29. This part of the tenant's claim fails.

Issue 5: Compensation for Inconvenience

Tenant's Position

30. The tenant seeks \$1380 in compensation for inconvenience suffered. This is in relation to several items which she says were destroyed by mold and bed bugs. She was unable to provide photographic evidence of these items but suggested that the other party had photos taken of them.

Landlord's Position

31. The landlord testified that tenants are expected to carry tenant's insurance, which would cover damaged belongings. They said they were "99.9%" sure that the rental agreement required tenants to have such insurance but did not provide a copy of the agreement.

Analysis

32. As stated in the Residential Tenancies Program Policy and Procedure Guide 09-004, tenants seeking compensation for damage to personal property should produce evidence at the hearing showing the condition and age of the damaged item and the costs they had incurred to repair or replace any damaged items.
33. There was no supplementary evidence provided by the tenant of the items or the cost of replacement. In the absence of such evidence, this part of the tenant's claim fails.

Issue 6: Security Deposit

34. As the landlord is owed moneys, they are entitled to apply the security deposit against the total owed. The security deposit in this case was \$382, but parties agreed \$87.89 has already been returned, leaving a new total of \$294.11.

Decision

35. The landlord's claim for unpaid rent succeeds in the amount of \$92.02.
36. The landlord's claim for damages succeeds in the amount of \$118.
37. The landlord's claim for other money owed fails.
38. The tenant's claim for a refund of rent fails.
39. The tenant's claim for compensation for inconvenience fails.
40. The landlord is owed moneys and may therefore apply the \$294.11 security deposit against the sum owed.
41. The landlord's claim was successful, and they are therefore entitled to have their reasonable costs reimbursed. In this case they ask for the \$20 application fee and \$16 for the cost of registered mail. As no receipt was provided for the registered mail I decline to grant it.

Summary of Decision

42. The landlord shall pay to the tenant \$64.09 as follows:

Security Deposit.....	\$294.11
Unpaid Rent.....	-\$92.02
Damages.....	-\$118.00
Hearing Expenses.....	-\$20.00
Total.....	\$64.09

24-July-2024
Date


Seren Cahill
Residential Tenancies Office