

Residential Tenancies Tribunal

Decision 19-0106-03

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:45 pm on 21 November 2019 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord" participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2", respectively, also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a return of missing possessions valued at \$200.00;
 - An order for a payment of rent in the amount of \$1700.00;
 - An order for a payment of late fees in the amount of \$75.00;
 - An order for a payment of \$300.00 for cleaning costs; and
 - Authorization to retain the \$425.00 security deposit.

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 case are sections 15 and 18 of the *Residential Tenancies Act, 2018* and William & Rhodes Canadian Law of Landlord and Tenant, (Carswell: Toronto, 1988).

Issue 1: Rent - \$1700.00

Relevant Submissions

The Landlord's Position

6. The landlord stated that she had entered into a 6-month, fixed-term rental agreement with the tenants on 01 January 2018 and a copy of that lease was submitted at the hearing (█ #1). The agreed rent was set at \$850.00 and it is acknowledged in the lease that the tenants had paid a security deposit of \$425.00.
7. On 21 May 2019 the landlord issued the tenants a 3-month termination notice and a copy of that notice was submitted at the hearing (█ #2). That notice had an effective termination date of 31 August 2019. On 10 June 2019 the tenants informed the landlord that they were moving on 01 July 2019 and they vacated on that date.
8. The landlord stated that the tenants owed her \$50.00 in rent for May 2019 and they owe \$800.00 for June 2019. She is seeking an order for a payment of \$850.00 for those 2 months.
9. The landlord also argued that the tenants were supposed to give her a full, 1-month notice that they were vacating and she pointed out that the notice she received was not adequate. In lieu of a proper termination notice, the landlord is seeking a payment of rent for July 2019 as well: \$850.00.
10. The landlord stated that in late June 2019 she put the rented premises up for sale and she started showing the property to prospective buyers after the tenants moved out.

The Tenants' Position

11. The tenants acknowledged that they owe rent for the period ending 30 June 2019.
12. Tenant2 stated that he did not know why they had to pay rent for July 2019 given that they were no longer residing at the unit. He also argued that as the landlord had already given them a termination notice, they were allowed to vacate any time prior to 31 August 2019.
13. Tenant1 stated that there is a 2% vacancy rate in Corner Brook and she was concerned that she would be unable to find a new apartment before they had to move. She stated that when they found a unit for 01 July 2019 they jumped at the opportunity.

Analysis

14. As the tenants had use and enjoyment of the rental unit up to 30 June 2019, I find that the landlord is owed rent to that date. There was no dispute that tenants owe \$850.00 to that date.
15. The landlord is correct to point out that the tenants had not properly terminated their agreement. According to section 18 of the *Residential Tenancies Act, 2018*, on 10 June 2019, the earliest termination date the tenants could have specified in a notice to the landlord would have been 31 July 2019.
16. Where tenants do not terminate their rental agreement in accordance with the Act, they are considered to have abandoned the rented premises and they are liable for any damages which result from that abandonment, including any loss of rental income suffered by the landlord. However, a landlord has a statutory obligation to mitigate that loss of rental income. Mitigation is typically achieved by trying to secure new tenants as soon as possible by advertising the unit for rent.
17. However, in William & Rhodes Canadian Law of Landlord and Tenant, when discussing the issue of mitigation of damages, the authors point out that:

In Canadian Medical Laboratories Ltd. v. Stabile (1992), 25 R.P.R (2d) 106 (Ont. Gen. Div.), it was held that sale of the property by the landlord does not satisfy the duty to mitigate as it ends the landlord's ability to re-rent the demised premises.

As the landlord listed the property for sale in June 2019 I therefore likewise conclude that she has not met her statutory obligation to mitigate her damages. As such, her claim for a payment of rent for July 2019 does not succeed.

Decision

18. The landlord's claim for a payment of rent succeeds in the amount of \$850.00 for the period ending 30 June 2019.

Issue 2: Late fees - \$75.00

Relevant Submissions

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

Analysis

20. Section 15 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.

21. The minister has prescribed 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.

22. As the tenants have been in arrears since 02 May 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Missing Possessions - \$200.00

Relevant Submissions

The Landlord's Position

24. The landlord stated that the rental unit was furnished with a TV stand, some plastic drawers and a full-length mirror when the tenancy began. She testified that these items were not at the unit after the tenants moved out and she is seeking \$200.00 for the costs of replacing those items. No quotes or receipts were submitted at the hearing.

The Tenant's Position

25. Regarding the TV stand, tenant1 stated that that item was damaged and falling apart when they moved into the unit and she stated that she had received permission from the landlord to dispose of it.

26. With respect to the mirror and boxes, tenant1 stated that they did not remove them from the rental unit and she denied that they are in their possession.

Analysis

27. I find that the landlord has failed to establish that the tenants had removed these items from the rental unit. The landlord's allegation was denied by the tenants and there was no other corroborating evidence submitted to the Board to establish that they were taken by the tenants (e.g., an outgoing condition report, etc.).

Decision

28. The landlord's claim for a return of missing possessions does not succeed.

Issue 4: Cleaning - \$300.00

29. The landlord also complained that the tenants had not adequately cleaned the rental unit before they vacated and she submitted photographs at the hearing showing the condition of the unit on 01 July 2019.
30. These photographs show that there were some items left in the refrigerator and that it was not adequately cleaned. They also show that there was some dirt and dust on the floors and that in one room there were numerous plastic bags found under and behind the furniture. The landlord also stated that the bathroom had not been adequately cleaned and the kitchen cupboards had to be wiped out.
31. The landlord stated that she had hired a cleaner at cost of \$120.00 and she stated that her mother also carried out 8 hours of cleaning. No invoice was submitted at the hearing. She is seeking a total of \$300.00 in compensation for cleaning.

The Tenants' Position

32. Tenant1 stated that she had always kept the rental unit tidy and clean and she claimed that they had cleaned the unit as best they could before they vacated. She acknowledged that it maybe could have been cleaned a little better before she vacated, but she argued that it did not require \$300.00 of cleaning.

Analysis

33. The photographs submitted by the landlord do show that there were some items left in the refrigerator and that the bins had not been adequately cleaned. These photographs also show that in one room there were numerous plastic bags and personal items left behind by the tenants, and they also show that some sweeping of the floors was required.

34. Based on that evidence, I find that the landlord is entitled to compensation for 6 hours of cleaning. Policy with this Section is that a landlord may claim for \$19.40 for each hour of their personal labour.

Decision

35. The landlord's claim for the costs of cleaning succeeds in the amount of \$116.40.

Issue 5: Security Deposit

36. The landlord stated that the tenants had paid a security deposit of \$425.00 on 05 January 2018 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, she shall retain that security deposit as outlined in this decision and attached order.

Issue 6: Hearing Expenses

37. The landlord submitted a hearing expense claim form and a receipt showing that she had paid \$78.75 to have the affidavit of service notarized. She also paid a fee of \$20.00 to file this application. As the landlord's claim has been successful, the tenants shall pay these hearing expenses.

Summary of Decision

38. The landlord is entitled to the following:

- a) Rent \$850.00
- b) Late Fees \$75.00
- c) Cleaning \$116.40
- d) Hearing Expenses \$98.75

- e) LESS: Security Deposit (\$425.00)

Total Owing to Landlord \$715.15

16 April 2020

Date

John R. Cook
Residential Tenancies Tribunal