

Residential Tenancies Tribunal

Decision 19-185-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:25 am on 28 March 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$3015.00,
 - An order for compensation for inconvenience in the amount of \$300.00,
 - An order for a payment of utilities in the amount of \$440.00, and
 - An order for compensation for cleaning costs in the amount of \$456.00.
4. The tenant is seeking the following:
 - A determination of the validity of a termination notice issued to him on 27 January 2019,
 - An order for compensation for inconvenience in the amount of \$1501.94, and
 - An order for refund of rent in the amount of \$96.77.

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 19, 20, 21, 22 and 24 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

7. The landlord was only served with the tenant's counterclaim on 27 March 2019, the day before the hearing, and I informed him that this did not meet the 10-day notice requirement set by this Section. The landlord waived his right to proper notice and requested that the hearing proceed as scheduled.

Issue 1: Utilities - \$440.00

Relevant Submissions

The Landlord's Position

8. The landlord and tenant entered into a monthly rental agreement in November 2018. The agreed rent was set at \$750.00 per month and the landlord testified that the tenant paid a pro-rated rent of \$400.00 for November 2018.
9. The landlord stated that the rental unit is a bachelor apartment designed for 1 person, and he complained that in December 2018 the tenant had allowed 2 other people to live at the unit with him. He testified that he brought that concern to the tenant and, as a consequence, it was agreed that the tenant would move out of the unit at the end of January 2019. However, as a result of a dispute between one of the tenant's guests and the occupants in the upstairs' apartment, the landlord terminated the tenancy on 28 January 2019 and the tenant vacated on that date.
10. The landlord testified that there is only 1 electricity meter at the unit and he had an agreement with the tenant that he would pay 40% of the electricity charges each month while the upstairs tenants would pay the other 60%. In support of that claim, the landlord submitted a copy of the rental advertisement (█ #5) in which he states: "Rent is \$750 + shared utility bill, which is generally low throughout the year".
11. The landlord further testified that as the tenant moved into the unit in mid-November 2018 he had an agreement with the tenant that he would only have to pay \$50.00 in utilities for that month and he stated that he received that payment from the tenant when he moved in.
12. The landlord testified, however, that the tenant had not paid for any of the electricity he consumed between 01 December 2018 and 28 January 2019. He submitted 3 bills at the hearing (█ ##1-3), covering the period from 27 November 2018 to 25 January 2019, and he calculated that the tenant owes him \$440.00.

The Tenant's Position

13. The tenant denied that there was an agreement that he would pay 40% of the electricity bill. He claimed that the agreement was that he would pay 1/3rd of the bill. In support of that claim, he pointed to a text-message the landlord had sent him after he discovered that he had a guest staying at the rental unit. In that message the landlord writes: "I can't split the light bill three ways if there are 4 adults in the house."
14. The tenant further argued that the rental unit is an unregistered and illegal apartment and as such he is under no obligation to pay rent or the utilities to the landlord.

Analysis

15. The burden of proof always lies with a landlord to establish the terms of the rental agreement. I find that the landlord has failed to meet that burden in this case with respect to the issue of the percentage of the electricity bill the tenant was required to pay. There is no written rental agreement in which this matter is addressed and the landlord produced no other written documentation to corroborate his position. The rental advertisement that the landlord submitted is of no help in this matter as it only states that the utility bill is shared—it does not state how it is shared.
16. The tenant stated that the agreement was that he was responsible for 1/3rd of the bill and the text-message he pointed to lends some credence to that view. As such, I find it probable that the agreement was that the tenant would pay 1/3rd of the electricity bills. That the apartment was unregistered does nothing to vitiate that agreement.
17. Based on the bills submitted at the hearing, I calculate that the tenant owes \$387.66 ($\$586.65 + \$576.32 \times 1/3$) for the period from 27 November 2018 to 25 January 2019. The tenant is not responsible for the last 3 days of November 2018 as he had paid \$50.00 to the landlord, as agreed, for that month. Those 3 days are set off against the last 3 days of his tenancy, 26 January to 28 January 2019, which are not included in the above calculation.

Decision

18. The landlord's claim for a payment of utilities succeeds in the amount of \$387.66.

Issue 2: Cleaning - \$466.00

Relevant Submissions

The Landlord's Position

19. On the breakdown submitted with his application (■ #6), the landlord indicated that he is seeking \$266.00 in compensation for 14 hours of cleaning and an additional \$200.00 to clean the oven and microwave.
20. The landlord testified that he was required to clean all the floors and walls in the apartment and he claimed that he had to do some painting as well. He stated that there were stains in the rug and on the couch and there was a cat odour in the unit as well as a smell of marijuana. He testified that because of the odour in the couch he was required to dispose of it. No photographs were submitted at the hearing.
21. The landlord stated he spent 2 days cleaning the unit and he is seeking compensation for 14 hours of his personal labour: \$266.00.
22. The landlord also claimed that the oven and microwave were dirty. He stated that he was informed that some rental agreements contain clauses stipulating that a tenant would be charged a fixed amount if they were to leave the oven or microwave dirty after they moved out. He argued that as the oven and microwave were left dirty he would therefore be entitled to \$200.00 in compensation.
23. He also complained that there was a protective plate missing from the microwave and he stated that he does not want his future tenants to use it as it may expose them to rays.

The Tenant's Position

24. The tenant stated that the landlord had given him a "fake" termination notice on 27 January 2019 leaving him only 24 hours to move out of the rental unit. He argued that he cannot be held responsible for the cleaning costs the landlord is seeking here as the notice he was given did not give him enough time to complete the cleaning.
25. Nevertheless, the tenant claimed that he had in fact carried out approximately 3 hours of cleaning before he moved out and he stated that all the floors and countertops were clean. He also stated that the oven had been left in decent condition. Regarding the microwave, the tenant claimed that the protective plate was already missing when he moved in.

Analysis

26. The burden of proof lies with the landlord to establish, on the balance of probabilities, that the rental unit was left in such a condition that he was required to spend 14 hours cleaning. Besides his testimony, which was challenged by the tenant, the landlord presented no evidence (e.g., photographs, videos, witness statements, etc.) establishing that cleaning was required.

27. Nevertheless, although the tenant testified that he had carried out 3 hours of cleaning before he vacated, he did concede that some cleaning was required. Based on that concession, I find that the landlord is entitled to a nominal award of \$77.60 for 4 hours of cleaning (4 hours x \$19.40 per hour).
28. Regarding the additional \$200.00 claimed by the landlord for the cleaning of the oven and microwave, it was the landlord's argument that some rental agreements contain clauses such that a tenant would be required to pay a fee if these appliances were not cleaned. I'll make 2 points here: first, the landlord has not established that these appliances needed to be cleaned—no photographs, etc. were submitted to establish his claim and it was the tenant's testimony that they were left in decent condition. Second, the rental agreement the landlord had entered into with the tenant was a verbal agreement and there was no evidence submitted at the hearing to establish that the tenant had agreed to pay a set fee if these appliances were not cleaned. Although it may be true that other landlords and tenants may have entered into such agreements, that has no bearing on this contract.

Decision

29. The landlord's claim for the costs of cleaning the rental unit succeeds in the amount of \$77.60.

Issue 3: Compensation for Damages - \$3015.00

Relevant Submissions

The Landlord's Position

30. The landlord stated that after the tenant moved out he discovered that the tenant had caused significant damage to the rental unit. With his application, the landlord submitted the following breakdown of these damages and the costs to carry out repairs ([redacted] #6):
 - a) Broken Cedar Creek mirror \$300.00
 - b) Area rug stained and damaged \$200.00
 - c) Towels and facecloths contaminated..... \$200.00
 - d) Shower curtain damaged..... \$15.00
 - e) Blinds damages..... \$100.00
 - f) Coffee table damaged \$200.00
 - g) Sofa and chair, stains and odours \$2000.00

Total \$3015.00

Broken Cedar Creek Mirror

31. The landlord stated that the rental unit was furnished with a Cedar Creek mirror, which he stated was approximately 5 years of age and in good condition when the tenancy began. The landlord stated that after the tenant moved out he found that the glass in that mirror was broken. That mirror has not yet been replaced but the landlord claimed that there was a price-tag on the back of the mirror showing that it had cost \$300.00. No photographs were submitted at the hearing showing the mirror or that price-tag.

Area Rug

32. The rental unit was also furnished with an area rug which the landlord stated was approximately 5 years old and was in good condition when the tenant moved in. The landlord stated that after the tenant moved out he found that the rug was stained and frayed and claimed that there were animal hairs on it. That rug has since been disposed of but the landlord has not had it replaced. No photographs were submitted by the landlord showing the condition of the rug and no receipts or quotes were submitted by the landlord to establish the costs he is seeking here.

Towels and Facecloths

33. The landlord stated that he had supplied the tenant with facecloths and towels when he moved into the unit and he claimed that they were all about 2 years old. The tenant reported to him that a day or so before he moved out the toilet overflowed and he used these towels to mop up the water. The landlord stated when he regained possession of the unit he found these wet towels, between 20 and 30 in number, in the bathtub. He stated that as they were contaminated with toilet water he decided to dispose of them. These towels and facecloths have not been replaced. No photographs, receipts or estimates were submitted at the hearing.

Shower curtain

34. The landlord stated that the shower curtain in the tenant's bathroom was frayed and he suspected that this damage was caused by the tenant's cats. He claimed that this curtain was approximately 6 months old and he is seeking \$15.00 as the replacement cost. It has not yet been replaced and no quotes or receipts were submitted at the hearing. No photographs were submitted either.

Blinds

35. The landlord stated that after the tenant moved out he discovered that the blinds in the kitchen and front room were frayed and chewed. He suggested that this damage was caused by the tenant's cats. The landlord stated that he did not know the age of these blinds but claimed that they were at least 5 years old. No

photographs were submitted showing this damage. No receipts or quotes were submitted establishing the costs the landlord is seeking here.

Coffee table

36. The landlord stated that the rental unit was furnished with a coffee table which he had purchased, second hand, approximately 3 years ago. He claimed that the rungs of this table have been damaged by the tenant's cats chewing on them. The landlord is seeking \$200.00 for the replacement costs of that table. No receipts or quotes were submitted at the hearing and no photographs were submitted showing this damage. The landlord stated that this table likely will not have to be replaced and he could probably repair the rungs by painting them.

Sofa and chair

37. The rental unit was also furnished with a sofa and matching chair which the landlord claimed were approximately 10 years of age and in very good condition. He testified that after the tenant moved out he found stains on these pieces of furniture which he was unable to remove. He also complained that there was a smell of smoke on these items as well as an animal odour. The landlord testified that that he disposed of the sofa and chair and he is seeking \$2000.00 for the costs of replacement. No photographs, receipts or quotes were submitted at the hearing. In support of his claim that the tenant was smoking in the unit, the landlord submitted an e-mail (■ #7) he had received from a guest the tenant had permitted to stay at the unit. In that e-mail, this guest writes: "I'm smoking weed in your kitchen right now."

The Tenant's Position

Broken Cedar Creek Mirror

38. The tenant acknowledged that the mirror was broken but he claimed that it became damaged when the occupants from the upstairs unit were banging on his walls and doors causing the mirror to fall over. He testified that the police were called about that incident and a report was filed. Regarding the costs the landlord is seeking here, the tenant claimed that the mirror was old and had depreciated in value.

Area Rug

39. The tenant claimed that the rug was not in good condition when he moved into the unit. He also claimed that he did not recall that there were any stains on the rug when he moved out. He pointed to a photograph of that rug on the submitted USB drive, which he stated was taken in early January 2019, and he claimed that no stains are visible in that photograph.

Towels and Facecloths

40. The tenant acknowledged that he had used these towels and facecloths to mop up the toilet water. He estimated that he had used about 1 dozen cloths. He stated that he had intentions of washing these towels and cloths before he vacated but he claimed that the upstairs tenants had locked his door which gave him access to the shared laundry room. In support of that claim he played a video he had taken on that date showing that he was unable to open this door. The tenant also claimed that the towels and cloths were over 2 years old and he argued that a claim for \$200.00 for their replacement is exaggerated.

Shower Curtain

41. The tenant admitted that one of his cats caused the damage to the shower curtain. He claimed that the shower curtain was not in good condition when he moved into the unit and he suggested that it is not worth very much.

Blinds

42. The tenant stated that the blinds were not in good condition when he moved into the unit though he did acknowledge that his cats had damaged the kitchen blinds. He denied that he had caused any damage to the blinds in the front room, however. The tenant argued that the costs the landlord is seeking here is exaggerated and he claimed that one can purchase a set of plastic mini-blinds at Walmart for \$10.00.

Coffee table

43. The tenant stated that he did not recall causing any damage to the coffee table and he claimed that it was in the same condition when he moved out as it was when he moved in. He pointed to a photograph of the coffee table, located on the USB drive, and stated that no damage was visible in that photograph. That photograph was taken in early January 2019.

Sofa and chair

44. The tenant stated that he did not recall that there were any stains on the sofa or chair. He also denied that he had been smoking in the unit though he admitted that he did smoke, from time to time, in the porch through the open door. He further argued that if there was a smell of smoke or animals on the sofa and chair, that smell should be attributed to the previous tenant. As evidence of that claim, he stated that when he moved into the unit he discovered pet toys under the couch and an ashtray under the sink. The tenant also claimed that the police visited the unit on 26 January 2019 and he claimed that they had informed him on that date that they could not detect a smell of smoke in the unit.

Analysis

45. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

2. *Obligation of the Tenant* - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
- That the respondent is responsible for the damage, through a willful or negligent act;
- The value to repair or replace the damaged item(s)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential tenancies policy 9-6.

Under Section 47 of the *Act*, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the *Act* or the rental agreement.

Order of director

47. (1) After hearing an application the director may make an order

- (a) *determining the rights and obligations of a landlord and tenant;*
- (b) *directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;*
- (c) *requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;*
- (d) *requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement;*

46. The landlord presented very little evidence at the hearing which would allow me to determine whether there were any damages caused to the unit, to determine the extent of the damage or to make a determination on the costs to carry out repairs. No photographs were taken of these alleged damages and no receipts,

quotes or estimates were submitted as evidence. For these reasons, his claim does not succeed.

Decision

47. The landlord's claim for compensation for damages does not succeed.

Issue 4: Compensation for inconvenience - \$300.00

Relevant Submissions

The Landlord's Position

48. The landlord stated that he lives in [REDACTED] and in order to carry out the painting and cleaning at the rental unit he was required to travel from that community to St. John's.
49. The landlord stated that he had to purchase gasoline as well as several meals over the course of that trip and he is seeking \$300.00 in compensation. No receipts were submitted at the hearing.

The Tenant's Position

50. The tenant stated that Botwood is 420 km from the rental unit and he figured that a small car could probably do that trip on \$40.00 worth of gasoline. He argued that the claim made by the landlord here is therefore exaggerated.
51. He also claimed that he did not have time to clean the unit as the landlord had only given him a 24 hour notice to vacate. He argued that had the landlord given him a proper notice he would have had the unit properly cleaned and the landlord would not have had to make the trip from [REDACTED] at all.

Analysis

52. The landlord presented no receipts at the hearing establishing that he had incurred \$300.00 traveling from [REDACTED] to St. John's.
53. Furthermore, the costs the landlord is seeking are costs incurred in the normal course of doing business as a landlord and I do not agree that the tenant should be held to account for the landlord's personal decision to live so far away from his place of business.

Decision

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

Issue 5: Validity of Notice

Relevant Submissions

The Tenant's Position

55. With his application, the tenant submitted a termination notice (████ #2) which was given to him on 27 January 2019. It had an effective termination date of 28 January 2019. This notice was issued under 5 different sections of the *Residential Tenancies Act, 2018*: s. 19 (notice where failure to pay rent), s. 20 (notice where material term of agreement contravened), s. 21 (notice where premises uninhabitable), s. 22 (notice where tenant's obligations not met) and s. 24 (notice where tenant contravenes peaceful enjoyment and reasonable privacy).
56. The tenant is seeking a determination of the validity of this notice.

The Landlord's Position

57. Although the notice specifies 5 different sections of the *Act*, the landlord identified 2 main reasons for issuing it.
58. On the one hand, the landlord claimed that there was an odour of smoke and animals in the unit making it effectively unrentable. He further claimed that it would be unfit for habitation if a person was allergic to animal or cigarette odours.
59. On the other hand, and this was the main reason for issuing the notice, the landlord claimed that the tenants in the upstairs unit were fearful of a guest the tenant had allowed to reside at the unit. This guest and the upstairs tenants had had numerous altercations and the landlord claimed that the police had to be called. He testified that the police informed him that in cases where the safety of a tenant is at stake, the landlord was entitled to issue a 24 hour notice of termination.

Analysis

60. At the hearing, I informed the landlord of the timeframe requirements for each of the sections of the *Act* he cited in the submitted termination notice. A s. 19 notice is to be given 10 days before the specified termination date, a s. 20 notice is a 1-month notice and notices under ss. 22 and 24 are 5-day notices. As the landlord's termination notice was a 1-day notice, it did not meet the timeframe requirements of these 4 sections and was therefore invalid if it was given for those reasons.
61. According to the *Act*, it is only when a tenant makes a rental unit unfit for habitation that a landlord could issue a 1-day notice—in fact, such a notice could specify that the tenant would have to move immediately. I was not persuaded,

however, that animal smells or the smell of cigarette smoke reaches the threshold standard of “uninhabitable”.

Decision

62. The termination notice issued to the tenant on 27 January 2019 is not a valid notice.

Issue 6: Refund of rent - \$96.77

Relevant Submissions

The Tenant's Position

63. The tenant argued that as he had been given a defective termination notice, requiring that he vacate on 28 January 2019, he should not have been charged rent for the last 4 days of January 2019.
64. He calculated that the landlord owes him \$96.77 for those 4 days.

The Landlord's Position

65. The landlord agreed that the tenant should be refunded the rent he had paid for those days after he moved out of the rental unit.
66. He argued, however, that as the tenant vacated on 28 January 2019, he is only entitled to a rebate for the last 3 days of January 2019.

Analysis and Decision

67. As the landlord agreed that the tenant is entitled to a refund of the rent for the period after the tenant had moved out, the claim succeeds. I agree with the landlord that the refund should be for 3 days as the tenant had use and occupation on 28 January 2019.
68. I calculate the amount owing to the tenant to be \$72.57 (\$750.00 for January 2019 ÷ 31 days = \$24.19 per day x 3 days = \$72.57).

Issue 6: Compensation for inconvenience - \$1501.94

Relevant Submissions

The Tenant's Position

69. The tenant complained that because he was given a 1-day termination notice he was severely inconvenienced as he had to move out of the rental unit so quickly.

He is seeking \$1501.94 in compensation for this inconvenience and he submitted the following breakdown of the costs associated with this portion of his claim ([REDACTED] #3):

a) Gas	\$160.00
b) More expensive rent.....	\$350.00
c) 4 days early for new spot	\$141.94
d) Moving expenses	\$300.00
e) Damage deposit for new spot	\$550.00
 Total	 <u>\$1501.94</u>

70. The tenant stated that the new apartment he has moved to is 21 km from the rental unit. In order to facilitate that move, he was required to get a loan of a truck from [REDACTED], 120 km from St. John's. He also claimed that as his girlfriend was also moving in with him at his new apartment, he was required to travel to [REDACTED], 155 km from St. John's, to collect her possessions. The tenant is seeking \$160.00 in compensation for the costs of purchasing gas during those trips. No receipts were submitted at the hearing.
71. The tenant also claimed that for the new, 3-bedroom apartment he is moving to he is being charged rent at a rate of \$1100.00 per month, \$350.00 more than what he had been charged for the 1-bedroom rental unit. He argued that because he was evicted on such short notice, he was unable to find an apartment that was cheaper and he is seeking compensation in the amount of \$350.00, representing the difference in these 2 rates of rent. No evidence was submitted at the hearing showing that there were no rental units available in St. John's that were cheaper than \$1100.00 per month.
72. The tenant also claimed that he was charged a pro-rated rent of \$141.94 at his new unit for the period from 28 January to 31 January 2019 and he argued that had he been allowed to remain at the unit until 31 January 2019, as agreed at the beginning of that month, he would not have had to pay that extra rent.
73. He is also seeking \$300.00 in compensation for 12 hours of his personal labour to move into his new apartment. The tenant conceded that he was going to be moving at the end of the month, anyhow, and although he would have had to spend some time moving his possessions at that point, he argued that he is entitled to compensation as he suffered emotional and physical stress.
74. Finally, the tenant claimed that he was required to pay a \$550.00 security deposit for his new unit and he claimed that this was also an inconvenience given the other expenses he had incurred in moving out of the rental unit.

The Landlord's Position

75. The landlord pointed out that the tenant was set to move out on 31 January 2019, anyways, and most of the costs that he is claiming here are costs that he

would have incurred anyhow despite the fact that he was required to move 3 days early.

76. Regarding the pro-rated rent, the landlord stated that he agreed with the tenant that he is entitled to a refund of the rent that he had paid to him for the last 3 days of January 2019, but he argued that this portion of the tenant's claim amounts to a claim for double rent, which he is not entitled to.
77. The landlord claimed that he also suffered a tremendous amount of emotional stress during this period because of the actions of the tenant and his guest and he lamented the fact that he had not brought a claim against the tenant for pain and suffering.

Analysis

78. The tenant acknowledged at the hearing that he had agreed to move at the end of January 2019, just 3 days after the termination date set out in the landlord's termination notice. He also testified that he already found a new apartment when the notice was issued. Accordingly, I am of the view that most of the expenses claimed by the tenant here are costs he would have incurred anyhow, in just 3 days, had the landlord not issued the termination notice. The tenant would still have had to exert his labour to move his items, he still would have had to get a truck and purchase gasoline and he still would have had to pay a security deposit to his new landlord.
79. Regarding the claim that the rent at the new apartment was \$350.00 more expensive, I find that this difference in rent likely has more to do with the fact that the new apartment is a 3-bedroom unit as opposed to a 1-bedroom. In any case, the tenant had already voluntarily decided to move into that unit and pay the more expensive rent before he had been given the invalid notice on 27 January 2018 and I therefore find that his argument that the defective notice is causally related to that increase in rent does not hold water.
80. Finally, regarding the pro-rated rent, I also agree with the landlord that the tenant is making a double claim through this application. Regardless of whether or not the tenant had been improperly evicted, he would be paying rent wherever he was residing—at the rental unit or at his new apartment—during the period from 28 January to 31 January 2019. As the tenant was successful in his claim for a refund of rent (Issue 6) I find that this second claim for rent for the same period cannot succeed.

Decision

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

Summary of Decision

82. The termination notice issued to the tenant on 27 January 2019 is not a valid notice.

83. The landlord is entitled to a payment of \$392.69 determined as follows:

a) Payment of utilities	\$387.66
b) Cleaning costs.....	\$77.60
c) LESS: Refund of rent	(\$72.57)
Total Owing to Landlord	<u>\$392.69</u>

30 April 2019

Date

John R. Cook
Residential Tenancies Tribunal