

Residential Tenancies Tribunal

Decision 19-310-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:05 pm on 15 May 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 by teleconference. The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated. His co-respondent, [REDACTED], was not in attendance.

Issues before the Tribunal

3. The landlord is seeking an order for compensation for inconvenience in the amount of \$365.84, compensation for damages in the amount of \$180.00 and "other" expenses totalling \$22.98.
4. The tenant is seeking an order for a refund of rent in the amount of \$800.00.

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 are section 10, 14 and 18 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 10 May 2019 and I informed her that this did not meet the 10-day notice requirement. The landlord waived her right to proper service and requested that hearing proceed as scheduled.

Issue 1: Compensation for Damages - \$180.00

Relevant Submissions

The Landlord's Position

8. The landlord and tenant entered into a monthly rental agreement on 12 July 2018. The agreed rent was set at \$800.00 per month.
9. On 16 February 2019 the landlord issued the tenant a termination notice under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy). That notice had an effective termination date of 22 February 2019. The landlord stated that she was informed by the tenant on 06 March 2019 that he had vacated the rental unit and she took possession on that date.
10. The landlord stated that the reason she had issued the tenant the termination notice was because he had changed the locks to the rental unit without any notification and without her permission. She also stated that the tenant had not provided her with keys to these locks and he had refused her entry to the rented premises on several occasions.
11. The landlord stated that on 01 March 2019 she issued the tenant a 24-hour notice to enter and on 02 March 2019 she went the rental unit but could not gain access. She stated that she called a locksmith on that date in order to enter the unit and in order to replace the 3 deadbolts that the tenant had installed.
12. With her application the landlord submitted an invoice showing that she was charged \$180.00 by the locksmith.

The Tenant's Position

13. The tenant acknowledged that he had changed these locks. He claimed that there were some break-ins in the area and he was concerned for the safety of his family.
14. The tenant stated that he did not realize that there was any requirement that he had to inform the landlord that he had changed the locks or that he had to provide her with any keys. He claimed, however, that as soon as he was

informed about the legislation on this matter, he sent the keys to the landlord through the mail.

Analysis

15. Statutory condition 6, set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

6. Entry Doors - Except by mutual consent, neither the landlord nor the tenant shall, during the use or occupancy of the residential premises by the tenant, alter a lock or locking system on a door that gives entry to the residential premises.

16. It was not disputed that the tenant had changed the locks to the rental unit without the consent of the landlord.
17. I accept the landlord's claim that she had not been provided with keys to the locks the tenant had installed. The tenant stated that he had vacated the unit on 27 February 2019 and I find that there was therefore no way that the landlord would have been able to enter the unit on 02 March 2019 without the assistance of the locksmith.
18. The evidence submitted by the landlord shows that she was charged \$180.00 to gain access to her unit and have new deadbolts installed. Her claim therefore succeeds in that amount.

Decision

19. The landlord's claim for compensation for damages succeeds in the amount of \$180.00.

Issue 2: Compensation for Inconvenience - \$365.84

Relevant Submissions

The Landlord's Position

20. The landlord stated that she had issued the tenant a termination notice on 16 February 2019 and he was required to vacate the unit on 22 February 2019.
21. The landlord resides in [REDACTED] and she stated that she took a flight from [REDACTED] to [REDACTED] on 24 February 2019 to take possession of the unit after the tenant had moved out.
22. She reiterated that the tenant did not vacate as required and she was also unable to enter the unit when she came to [REDACTED] as the locks had been changed and she had not been provided with keys.
23. The landlord stated that this trip was a waste and she is seeking compensation for the 1-way ticket she purchased from [REDACTED] to [REDACTED]. She submitted her booking confirmation showing that she was charged \$365.84 for that ticket.

The Tenant's Position

24. The tenant acknowledged that the landlord had given him notice that he was required to vacate on 22 February 2019. He pointed out, though, that after he had received that notice he had filed an Application for Dispute Resolution with this Section seeking a determination of the validity of that notice. A hearing was scheduled for 06 March 2019 and the tenant stated that he was informed by staff at this Section that he did not have to vacate until after that hearing was held.
25. The tenant also pointed out that the landlord had only given him 5 days to move out of the unit and he complained that this was not enough time to pack and move his things. He claimed that he had been in contact with the landlord pleading with her to give him more time.
26. The tenant argued that it was a bad decision on the part of the landlord to think that he would be vacated on 22 February 2019 given that he had informed her that she had not given him enough time to move and given that they were scheduled for a hearing with this Board on 06 March 2019.

Analysis

27. The costs associated with travelling to and from a rental unit to deal with tenant-related matters is a cost of doing business for a landlord.
28. Furthermore, the tenant cannot be held liable for the landlord's decision to live so far away from that place of business.

Decision

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

Issue 3: “Other” Expenses - \$22.98

Relevant Submissions

30. The landlord stated that in preparation for the hearing scheduled for 06 March 2019 she had purchased a USB drive in order to present her evidence to the Board. She stated that this drive cost her \$22.98. No receipt was presented at the hearing.

Analysis

31. The costs of preparing for a hearing are considered to be hearing expenses. Policy with this Section is that if an applicant receives an award, their hearing expense would be awarded as well.
32. The landlord and the tenant both discontinued their applications on 06 March 2019 and neither party received an award. As such, the landlord’s claim for those hearing expenses does not succeed.

Decision

33. The landlord’s claim for “other” expenses does not succeed.

Issue 4: Refund of Rent - \$800.00

Relevant Submissions

The Tenant’s Position

34. The tenant stated that on 07 January 2019 the landlord had issued him a termination notice with an effective termination date of 07 April 2019. The landlord was terminating the agreement on that date as she had to carry out renovations on the property.
35. The tenant stated that the landlord had made an agreement with the tenant such that if he vacated the unit prior to 01 April 2019, as opposed to 07 April 2019, the landlord would refund the rent the tenant had paid for March 2019.
36. In support of that claim, the tenant submitted an e-mail the landlord had sent him outlining that verbal agreement.
37. The tenant argued that as he had vacated the unit on 27 February 2019 he ought to receive a refund of the last month’s rent he had paid to the landlord, as agreed.

The Landlord's Position

38. The landlord acknowledged that she had entered into this verbal agreement with the tenant in January 2019.
39. She pointed out, however, that that agreement was made before the relationship between herself and the tenant had deteriorated in February 2019. She reiterated that the tenant had changed the locks to the rental unit during February 2019 and he had refused her access to her property. She was only made aware that the tenant had moved out of the unit on 06 March 2019.
40. The landlord argued that as the tenant had use of the unit during February 2019 she is entitled to keep the rent he had paid for that month.

Analysis

41. I was not persuaded that the tenant is entitled to a refund of the rent he had paid for February 2019.
42. In the e-mail the landlord had sent to the tenant on 14 February 2019 she states that she would refund "March's rent" if the house is left in good condition and if the tenant vacated by 01 April 2019.
43. Although the tenant testified that he vacated on 27 February 2019, and, hence, prior to 01 April 2019, no rent was paid for March 2019. As no rent was collected for that month, I am of the view that the landlord cannot refund that rent.

Decision

44. The tenant's claim for a refund of rent does not succeed.

Summary of Decision

45. The landlord is entitled to the following:

- Compensation for damages\$180.00

02 August 2019

Date

John R. Cook
Residential Tenancies Tribunal