

## Residential Tenancies Tribunal

Decision 19-0509-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:20 am on 23 September 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate.

### Issues before the Tribunal

3. The landlord is seeking the following:
  - An order for a payment of rent in the amount of \$1800.00;
  - An order for a payment of late fees in the amount of \$75.00;
  - An order for compensation for damages in the amount of \$1267.45;
  - An order for a compensation for inconvenience in the amount of \$100.00;
  - An order for a payment of "other expenses" in the amount of \$517.50; and
  - Authorization to retain the security deposit of \$675.00.

### 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 decision Section 15 of the *Residential Tenancies Act, 2018*, policy 9-3: Claims for Damage to Rental Premises and rule 29 of the *Rules of the Supreme Court, 1986*.

## Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her by telephone from the hearing room. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. The landlord submitted an affidavit at the hearing stating that the tenant was served with notice of this hearing, by e-mail, on 05 September 2019. A copy of that e-mail was also submitted at the hearing as well as a rental application showing that that e-mail address was provided to the landlord by the tenant before the tenancy began. The tenant has had 17 days to provide a response. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

### Issue 1: Compensation for Damages - \$1267.45

#### Relevant Submissions

7. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 March 2018 and a copy of that executed lease was submitted with his application (■ #1). The agreed rent was set at \$900.00 and it is acknowledged in the leases that the tenant had paid a security deposit of \$675.00.
8. The landlord stated that the homeowner received a disconnect notice from Newfoundland Power in late January 2019 and he found the unit abandoned on 01 February 2019. No notice was given to the landlord or the homeowner that the tenant had intended to move out of the unit.
9. The landlord stated that after the tenant had moved out of the unit he discovered that there were some damages caused by her which needed to be repaired. With his application he had submitted 10 print-offs which had been "entered into his system" showing the costs that he had incurred in carrying out the repairs.

#### Cleaning

10. 2 of those documents show that he had "entered into his system" charges of \$299.00 and \$63.25 for "cleaning throughout" the rental unit by Executive Home Cleaners. No receipt or invoice was submitted showing those charges.
11. The landlord claimed that the tenant had kept cats at the unit and that there was a strong smell of cat urine in the apartment after the tenant had vacated.

12. He also claimed that no cleaning had been carried out and that the cleaners were required to clean out all the cabinets, to wash the floors, wipe down the walls and door handles, and to clean the bathroom.
13. No photographs were submitted at the hearing.

#### Garbage Removal

14. The landlord also claimed that he was required to remove garbage from the property after the tenant vacated and 1 of his print-offs show that he was charging the tenant \$148.50 + HST for the costs of removing the garbage.
15. The landlord claimed that there was "debris" left at the unit, "odds and ends", garbage bags, an old sneaker, a broken broom handle, cat toys, broken furniture and several mattresses. No photographs were submitted showing that garbage.
16. The landlord stated that it took him 2.5 hours to have that garbage removed.

#### Washing Machine

17. The landlord also claimed that, during her tenancy, the tenant had broken the washing machine that she had been supplied with and it had to be replaced. He stated that the top of the washing machine had been removed. No photographs were submitted at the hearing showing this damage.
18. 1 of the submitted print-offs show that he had charged the tenant \$300.00 + HST for a replacement washing machine and another shows that he charged her \$80.00 + HST to deliver and hook-up the washing machine. No receipts or invoices were submitted at the hearing.

#### Site Visit

19. The landlord stated that after the tenant moved out, his workers gathered up the garbage and mattresses the tenant had left behind and put them in a central location in the unit for the tenant so they could be easily retrievable by her. His workers also swept the floors at the unit after these items were moved.
20. The landlord charged the tenant \$90.00 + HST to have that work carried out.

#### Painting

21. The landlord also complained that the tenant had caused damage to the walls in one of the bedrooms. He claimed that the railing of the bed had been rubbing up against one of the walls and he also stated that there were holes in the walls and that some paint had been stripped off the walls. No photographs were submitted showing this damage.

22. The landlord's print-offs show that he charged the tenant \$118.00 + tax to repaint that room and he additionally charged her \$35.00 + tax for painting supplies. No receipts were submitted at the hearing.

## Analysis

23. 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;*

24. No photographs were submitted at the hearing showing any of the damages the landlord had complained about or showing the condition of the rental unit after

the tenant had moved out. Furthermore, the landlord claimed that he was charged to have the unit cleaned, to purchase a washing machine and to purchase painting supplies. But no invoices or receipts were submitted at the hearing showing that the landlord had incurred any costs and I cannot accept what the landlord had “entered into his system” as evidence that he had incurred these costs.

25. Based on this paucity of evidence, this portion of the landlord’s claim does not succeed.

### **Decision**

26. The landlord’s claim for compensation for damages does not succeed.

## **Issue 2: Compensation for Inconvenience - \$100.00**

### **Relevant Submissions**

27. The landlord is seeking \$100.00 in compensation for the inconvenience he suffered in “having to facilitate everything” and to communicate with the tenant.

### **Analysis**

28. No evidence was presented at the hearing showing that the landlord had incurred any costs as a result of any inconvenience caused by the tenant. I also find that coordinating and communicating with tenants is part of the normal course of doing business for a landlord

### **Decision**

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

## **Issue 3: Rent: \$1800.00**

### **Relevant Submissions**

30. The landlord stated that he was given no notice that the tenant would be moving out of the rental unit and he claimed that he was unable to re-rent the unit again until 01 April 2019.
31. He stated that he began advertising the unit shortly after he regained possession of the property. He stated that the unit had been advertised on Kijiji, Zulu, Rent Score and on Facebook. No copies of those advertisements were submitted at the hearing.

## Analysis

32. I accept the landlord's claim that the tenant had given him no notice that she would be vacating the rental unit and I also accept his claim that he was unable to re-rent the property unit 01 April 2019.
33. As the tenant was in a fixed-term lease which was not set to expire until the end of February 2019, I find that he is entitled to rent for February 2019.
34. I also find that as the tenant was in a fixed-term agreement, she was required to provide the landlord with 2 months' notice that she was terminating her rental agreement. At the end of January 2019, the earliest termination date the tenant could have given, had she issued the landlord a proper notice, would have been 31 March 2019. Accordingly, I find that the landlord is entitled to rent for that month as well.

## Decision

35. The landlord's claim for compensation for lost rental income succeeds in the amount of \$1800.00.

## Issue 4: Late Fees - \$75.00

### Relevant Submissions

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

## Analysis

37. 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.***

38. 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.*

39. As the tenant has been in arrears since 01 February 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

### **Decision**

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

### **Issue 5: Other Expenses - \$517.50**

41. The landlord stated that he had charged the homeowner a leasing fee of \$517.50 to advertise and re-rent the property.

42. He argued that the tenant is responsible for compensating the homeowner for that fee he charged him as the tenant had not given him any notice that she was moving out of the unit.

### **Analysis**

43. Where a tenant fails to provide a landlord with a proper termination notice, a landlord is entitled to a payment of rent in lieu of notice so long as he has mitigated his damages. The landlord was awarded \$1800.00 in section 3, above, as the unit was vacant for 2 months and the landlord suffered a loss of rent during that period.

44. I was not persuaded that the landlord is entitled to the leasing fee, however.

45. First of all, that fee does not concern the contract between him and the tenant but rather between him and the homeowner and I find that it is not properly a landlord-tenant matter.

46. Second, the landlord did state that if the tenant had hired him to find an assignee or sublessee then she would have also been charged that fee. But the landlord stated that the tenant had not hired him to sublease or assign the property.

47. Third, the landlord stated he would have charged the homeowner that fee even if the tenant had given him a proper termination notice. The issue, then, of not having given the landlord a proper notice seems unconnected to the issue of charging the homeowner a leasing fee. The homeowner would have been charged that fee, regardless.

### **Decision**

48. The landlord's claim for a leasing fee does not succeed.

### **Issue 6: Security Deposit**

49. The landlord stated that the tenant had paid a security deposit of \$675.00 on 02 March 2018 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, he shall retain the security deposit as outlined in this decision and order.

### **Issue 7: Hearing Expenses**

50. As the landlord's claim has been successful, the tenant shall pay his hearing expense of \$20.00 for the costs of filing this application.

### **Summary of Decision**

51. The landlord is entitled to the following:

- Rent.....\$1800.00
- Late Fees .....\$75.00
- Hearing Expenses .....\$20.00
- **LESS: Security deposit.....(\$675.00)**

Total Owing to Landlord .....**\$1220.00**

24 March 2020

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Date

John R. Cook  
Residential Tenancies Tribunal