

Residential Tenancies Tribunal

[REDACTED] Decision 19-0606-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:20 pm on 04 November 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. She was represented at the hearing by her property manager, [REDACTED] ("[REDACTED]").
3. The tenants, [REDACTED] ("[REDACTED]") and [REDACTED] ("[REDACTED]") did not participate in the hearing.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$4129.91;
 - An order for compensation for inconvenience in the amount of \$795.40;
 - An order for a payment of rent in the amount of \$795.62;
 - An order for a payment of utilities in the amount of \$134.89;
 - An order for a payment of "other" expenses in the amount of \$1076.50; and
 - Authorization to retain the security deposit of \$550.00.

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 decision is section 21 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

7. The tenants were not present or represented at the hearing. I was able to reach [REDACTED] by telephone. He stated that he was willing to attend the hearing and informed me that he would arrive at the hearing in 45 minutes. He never did show up.
8. 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 respondents' absence so long as they have been properly served. The landlord submitted affidavits stating that the tenants were served with notice of the hearing in August 2019 and again, with notice of the rescheduled hearing on 04 October 2019. These notices were sent via text-message to the telephone number provided by [REDACTED] on the rental agreement. Copies of these text-messages were also submitted by the landlord. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence

Issue 1: Compensation for “Other” Expenses - \$1076.50

Relevant Submissions

9. The landlord stated that she had entered into a 6-month, fixed-term rental agreement with the tenants, commencing 15 March 2018 and a copy of the executed lease was submitted with her application ([REDACTED] #1). The agreed rent was set at \$1100.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$550.00.
10. On 28 March 2019 the landlord received a call from Newfoundland Power informing her that they were about to disconnect the electricity to the rental unit. [REDACTED] went to the property, entered, and found that the unit was in a deplorable condition. There was garbage strewn all throughout the apartment and there was animal urine and feces everywhere. [REDACTED] also found that there were 3 dogs, 3 rats, some rodents, 2 rabbits, one of which was deceased, a cat, some tropical fish and a turtle in the apartment.
11. [REDACTED] called the Royal Newfoundland Constabulary (RNC) and Humane Services. Human services informed the landlord that the animals were in very poor shape and it appeared that they had not had any food or water for about a week. They removed the animals from the property.
12. The tenant, [REDACTED] arrived at the unit while the RNC and Humane Services were there and [REDACTED] issued her a termination notice. A copy of that notice was submitted at the hearing ([REDACTED] #2). That notice was issued under section 21 of

the *Residential Tenancies Act, 2018* (notice where premises uninhabitable) and it had had an effective termination date of that same day. The locks were changed to the rental unit and the landlord took possession of the property on that same day.

13. The landlord submitted 45 photographs at the hearing (■ #7), organized by room, showing the condition of the property after ■ had entered. In every room there was a significant amount of garbage, clothing and animal feces on the floors. In some rooms, there were also wood chips littered on the floors and soiled diapers.
14. The landlord also complained that the animals had been urinating on the floors and walls throughout the unit. She stated that that urine had soaked through the baseboards and the lower parts of the drywall and had also soaked through the floors into the subfloors. Some of the submitted photographs show that the subfloors are stained with urine.
15. Because of the animals and the urine, feces and soiled diapers, the landlord claimed that there was a very bad smell in the unit. She also stated that there were flies everywhere, and she pointed to her photographs which show fly feces on the cupboards, trim work and on some lights.
16. In addition to the mess and urine and feces from the animals, the landlord complained that the tenants had caused other damages to the property. This included damage to interior doors, damage to window screens, missing smoke alarms and lawn damage.
17. With respect to the damage caused to the unit by the tenants' animals, the landlord stated that this damage was repaired by a restoration company and the landlord's insurance policy covered those costs. The landlord was also reimbursed for the costs of cleaning, the loss of rental income she had suffered during the clean-up and her electricity bills during this period.
18. The restoration company removed all the flooring in the unit and they had to remove all subflooring as well. The areas underneath the subfloors were then sealed and new subflooring and flooring was installed. New baseboards were installed as well and some drywall had to be cut out and reinstalled. Much of the bottom portion of the remaining drywall in the unit had to be sealed as well. The landlord also stated that the cabinetry had to be removed as well in order to get to the walls where the odour was coming from.
19. The Proof of Loss document submitted by the landlord (■ #11) shows that the total amount paid out by the insurance company to repair the damages caused by the animals came to \$19,741.12.
20. The landlord submitted a receipt showing that she had paid an insurance deductible of \$1000.00 (■ #12) and a second receipt showing that she was

charged \$56.50 to have the Proof of Loss document notarized. She also submitted a receipt showing that she had paid \$20.00 to file this application.

21. The landlord is seeking an order for a payment of the costs just outlined in the previous paragraph.

Analysis

22. The evidence submitted by the landlord was overwhelmingly convincing. Given the extent of the damage caused by the tenants and their animals, they should consider themselves lucky that the landlord had an insurance policy that covered the almost \$20,000.00 in damage they had caused.

Decision

23. The landlord's claim for the insurance deductible, notarization fee and filing fee succeeds in the amount of \$1076.50.

Issue 2: Compensation for Damages - \$4129.91

24. Besides the damage which had been caused by the tenants' animals, for which the repair costs were covered by the landlord's insurance policy, the landlord also testified that she had incurred further costs for other damages which were not caused by the tenants' animals. She submitted the following breakdown of the costs to carry out these additional repairs (■ #4):

• Lock rekey and dump run	\$313.02
• 2 new keys	\$5.00
• Receipts	\$1050.44
• Hours for repairs.....	\$2337.70
• Lawn Care	\$345.00
• Replace smoke alarm.....	\$83.75
Total.....	<u>\$4129.91</u>

Lock rekey and dump run
2 new keys

25. The landlord submitted an invoice from her property manager's company (■ #5) showing that she was charged \$122.19 + tax to have the locks to the rental unit changed after the tenants were issued their termination notice. She also stated that after storing the tenants' abandoned property for the required period, she was given permission, on 15 April 2019, by the Director of Residential Tenancies (■ #8) to dispose of that property. The invoice shows that the landlord was charged \$150.00 + tax for her property manager to make 4 trips to the dump to dispose of that property.

Receipts

26. The landlord stated that the whole apartment had to be repainted after the contractors had finished with their repairs. She complained that there were stains all over the walls from coffee and animal urine and the painting was required to help alleviate the smell in the rental unit. The landlord stated that the unit was last painted 2016.
27. The landlord's photographs also show that the window screens in the apartment were ripped and torn and they needed to be replaced. The photographs also show that a French door was damaged—a pane of glass was broken and the bottom corner had a large crack in it.
28. The landlord submitted copies of 11 receipts (████ #10) showing purchases she had made at Kent and The Home Depot for the costs of painting supplies, plaster, caulking and paint. These receipts also show that the landlord had to purchase a new door, a passage set and window screens. These receipts total \$1002.15.

Labour

29. The landlord submitted a spreadsheet at the hearing (████ #9) which showed the hours she had been working each day to bring the rental unit back to its original condition prior to the tenants moving in. This spreadsheet shows the work she had carried out at the unit for which her insurance company had reimbursed her, a total of 70 hours, as well as the work that she had completed herself.
30. The work that the landlord had carried out included the repainting of the whole apartment, cleaning of all the windows, rehanging the French door, replace window screens, reinstallation of lights and thermostats and cleaning.
31. According to the spreadsheet, the landlord spent 120.5 hours carrying out that work and she is seeking \$2337.70 in compensation (120.5 hours x \$19.40 per hour).

Lawn Care

32. The landlord also complained that there were holes found in the lawn which had been caused by the tenants' animals. She complained that there was animal feces all over the lawn and there was cat litter thrown on the lawn as well. She also stated that there was a dead animal carcass found on her lawn.
33. The landlord submitted a copy of a receipt from Green Lawn showing that she was charged \$345.00 to have the garbage, litter and feces removed from the lawn, as well as the dead animal. The holes were filled and the lawn was reseeded.

Replace Smoke Alarm

34. The landlord also pointed to the photographs showing that a smoke alarm was missing. She submitted a receipt showing that she was charged \$83.75 to purchase a smoke alarm and have it installed.

Analysis

35. 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*

36. Regarding the 4 trips to the dump, I accept the landlords evidence which shows that she was charged \$172.50 (\$150.00 + tax) for those trips and her claim therefore succeeds in that amount.
37. Regarding the keys and locks, however, that claim fails. Policy with this Section is that a landlord cannot charge the tenant for the replacement of locks unless they were damaged by the tenant or the tenant's visitors. Replacing locks is considered a cost of doing business for a landlord. When a rental agreement is terminated and another tenant is taking occupancy of the unit, the landlord is expected to change locks for the security of the new tenant.
38. Regarding the painting, it is expected that a landlord would have to repaint a rental unit every 3 to 5 years as a result of normal wear and tear. Given that the unit was last painted in 2016, the unit would probably have had to be repainted in another year or 2 anyhow. As such, I reduce the landlord's award for painting by 50%, to factor in depreciation. The landlord has not broken out the exact hours she had spent painting, but the total claim for materials and labour to clean, carry out repairs and paint comes to \$3388.14 (\$1050.44 + 2337.70). I can't be exact, but I will estimate that half of those costs were for painting, and I therefore find that, for painting and repairs, the landlord is entitled to \$2541.11 (\$1694.07 (\$3388.14 ÷ 2) + \$847.04 (\$1694.07 ÷ 2)).
39. I also accept the landlord's evidence showing that the tenants had caused damage to the lawn and that they had removed a smoke detector. As such, her claim for those costs also succeeds.

Decision

40. The landlord's claim for compensation for damages succeeds in the amount of \$3142.36, determined as follows:

• Dump run.....	\$172.50
• Painting and repairs.....	\$2541.11
• Lawn Care	\$345.00
• Replace smoke alarm.....	\$83.75
 Total.....	 <u>\$3142.36</u>

Issue 3: Compensation for Inconvenience - \$795.40

41. In addition to the hours the landlord had spent cleaning, painting and carrying out repairs, she is also seeking compensation for the costs of communicating and coordinating with her insurance company, the restoration company and her lawyer. According to her submitted breakdown, the landlord is seeking compensation for 31 hours.

42. The landlord is also seeking compensation for 10 hours for the time it took her to complete the paper work to submit to this Section.

Analysis

43. Regarding the costs of associated with filling out the paperwork to submit a claim to this Section, those costs are considered hearing expenses and are dealt with in section 6, below.
44. Regarding the remaining costs the landlord is seeking here, these are costs incurred by the landlord in the course of carrying out her business. As such, her claim does not succeed.

Decision

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

Issue 4: Rent - \$795.62

46. The landlord stated that the restoration company was carrying out repairs at her unit from 01 April to 13 May 2019. She collected no rent during that time and her insurance policy covered the loss of rent she suffered for that period.
47. The landlord stated that as soon the smell of urine and feces was removed from the rental unit she began advertising the unit for rent and she secured new tenants for 06 June 2019.
48. The landlord is seeking compensation for the loss of rent she suffered for the period from 14 May to 06 June 2019. She submitted a copy of her calculations at the hearing (■ #14) showing that she lost \$795.62 during that period.

Analysis

49. I accept the landlord's claim that she was unable to secure new tenants until 06 June 2019 and I agree with her that that the reason the unit was vacant between 28 March and 06 June 2019 was because of the damages caused to the unit by the tenants and their animals.
50. I also accept the landlord's calculation here and I agree with her that she is entitled to a payment of \$795.62 ($\$1100.00 \text{ per month} \times 12 \text{ months} = \$13,200.00$ $\text{per year} \div 365 \text{ days per year} = \$36.16 \text{ per day} \times 22 \text{ days} = \795.62).

Decision

51. The landlord's claim for a payment of rent succeeds in the amount of \$795.62.

Issue 5: Utilities - \$134.89

52. The landlord also stated that her insurance policy covered the utility payments at the unit until 13 May 2019, but she incurred the costs of electricity for the period from 14 May to 06 June 2019.
53. The landlord submitted her electricity bills at the hearing (█ ##15-17) showing that she was charged \$134.89 for that period.

Analysis

54. For the same reasons set out in the previous section, I find that the tenants are responsible for the electricity costs incurred by the landlord during this period and I accept her evidence which shows that she was charged \$134.89

Decision

55. The landlord's claim for a payment of utilities succeeds in the amount of \$134.89.

Issue 6: Hearing Expenses – \$1571.20

56. The landlord submitted a hearing expense claim form (█ #18) and a receipt for \$20.00 for the cost of filing this application, receipts totalling \$59.42 for the costs of sending documents by registered mail, receipts totalling \$175.00 for the costs of hiring a process server, receipts totalling \$230.00 for the costs of having various affidavits notarized, receipts totalling \$69.30 for printing photographs, and receipts totalling \$69.59 for costs of purchasing software to export text-messages from her smartphone.
57. The landlord is also seeking \$954.06 in compensation for 20 hours of her time (20 hours x \$47.70 per hour) to track down the tenants, mail documents, hire a process server, notarize documents and submit forms to this Section. The landlord argued that she ought to be compensated for the costs of tracking down the tenants as they had been evading service and had considerably drawn out this process and had wasted her time.

Analysis

58. Policy with this Section is that the party that receives an award will have their hearing expenses awarded also. Claimable expenses include: the cost of hiring a process server, the cost of filing the application, the cost of serving a claim by registered mail, courier service or express post, and the cost of videotapes, photocopying, film and development of photographs that help support the claim. Also, a landlord may claim up to a maximum of \$25.00 if they served the respondents personally.

59. The costs of hiring a lawyer and the costs incurred in preparing for and attending the hearing are not claimable expenses.
60. Accordingly, I find that the landlord is entitled to the expenses detailed in paragraph 56, less the filing fee, which was awarded in section 1, above.
61. According to policy with this Section, the landlord's claim for compensation for 20 hours of her personal time attempting to track down the tenants and prepare for the hearing does not succeed.

Decision

62. The landlord's claim for hearing expenses succeeds in the amount of \$603.31.

Issue 7: Security Deposit

63. The tenants paid a security deposit of \$550.00 on 06 March 2018 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and attached order.

Summary of Decision

64. The landlord is entitled to the following:

a) "Other" Expenses	\$1076.50
b) Compensation for Damages	\$3142.36
c) Rent	\$795.62
d) Utilities	\$134.89
e) Hearing Expenses	\$603.31
f) LESS: Security Deposit	
(\$550.00)	
Total Owing to Landlord	
<u>\$5202.68</u>	

08 April 2020

Date

John R. Cook
Residential Tenancies Tribunal