

Residential Tenancies Tribunal

Decision 19-0751-01

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:20 am on 05 June 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", also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for vacant possession of the rented premises;
 - An order for compensation for damages in the amount of \$53.94;
 - An order for a payment of rent in the amount of \$613.00; and
 - An order for a payment of late fees in the amount of \$75.00.

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 case are sections 4, 10, 15, 16, 19 and 24 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The landlord amended the application at the hearing and stated that he was now seeking a payment of rent totaling \$944.00.
7. The landlord called [REDACTED] (), the resident manager, as a witness.

Issue 1: Compensation for Damages - \$53.94

Relevant Submissions

The Landlord's Position

8. The landlord stated that he had entered into 1-year, fixed-term rental agreement with the tenant on 20 December 2018 and a copy of the executed lease was submitted at the hearing (█ #1).
9. The residential complex in which the tenant's apartment is located contains mail lockers and the tenant was supplied with a key to his box when he moved in.
10. The landlord stated that the tenant had cracked off the key in the lock to his mail box sometime in September 2019 and he had to order a replacement lock. He submitted a receipt at the hearing (█ #2) showing that he was charged \$53.94 for a replacement.
11. The landlord's witness, █ corroborated the landlord's claim that the key had broken off in the lock and she stated that she was informed of that matter by Postal worker.

The Tenant's Position

12. The tenant acknowledged that his key had broken off in the lock to his mail box but he stated that he did not deliberately cause that damage.
13. The tenant also complained that the replacement key the landlord had given him does not open his mailbox but he can use it to open about half a dozen other mailboxes that do not belong to him.

Analysis

14. There is no dispute that the tenant's key had snapped off in the lock to his mailbox and I accept the landlord's evidence which shows that he spent \$53.94 to purchase a new lock.
15. However, I was not persuaded that this damage was caused by any deliberate or negligent act on the part of the tenant and the landlord and his witness both acknowledged that it was possible this damage was accidental.
16. As no evidence was submitted to establish that the lock was damaged through a deliberate or negligent act, the landlord's claim for the costs of repairs does not succeed.

Decision

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

Issue 2: Rent - \$944.00

Relevant Submissions

The Landlord's Position

18. According to the submitted rental agreement, the tenant is required to pay \$321.00 per month.
19. The landlord stated that the tenant's rent is subsidized by Newfoundland Labrador Housing (NLH) and that in addition to the rent the tenant had to pay himself, NLH had agreed to pay to the landlord an additional \$479.00 per month, meaning the landlord was to collect a total of \$800.00 per month.
20. The landlord submitted rent records at the hearing showing the payments he had received from the tenant and NLH since the tenant moved in (████ #3).
21. According to these records, the landlord has received all the rent payments from NLH for the period ending 31 October 2019. However, since June 2019, the tenant has only made 2 payments to the landlord: \$321.00 on 07 June 2019 and \$400.00 on 19 August 2019.
22. According to the landlord's records, the tenant is currently in arrears in the amount of \$944.00.

The Tenant's Position

23. The tenant did not dispute the landlord's record of the payments he had made and he acknowledged that the last payment he made was on 19 August 2019 in the amount of \$400.00.
24. The tenant claimed that he had not been making his payments because he was not able to get the appropriate paperwork to his worker as he did not have access to his mailbox and was unable to collect his mail for the last 3.5 months.

Analysis

25. I accept the landlord's claim that the tenant had not paid his rent as required and the tenant did not dispute the landlord's records.
26. But according to these records, the rent increased from \$800.00 to \$810.00 on 01 May 2019. The landlord stated that there was a bulk rental increase on that date for all the tenants at the complex who receive a rent subsidy from NLH. He

stated that this was a long-standing practice at the complex based on an agreement he had with NLH.

27. The landlord did acknowledge that this increase did not meet the requirements of the *Residential Tenancies Act, 2018* but he pointed out that NLH are not bound by the rental increase regulations and they set rent based on a tenant's income.
28. Section 4 of the *Residential Tenancies Act, 2018* states:

Crown bound

4. (1) The Crown is bound by this Act.

(2) Notwithstanding subsection (1), where a residential premises is owned or administered by or for the Government of Canada, the province, a municipality or an agency of one of them and rent for the residential premises is directly subsidized by the Government of Canada or the province, this Act does not apply to the

- (a) setting of rent based on the tenant's income;*
- (b) subletting of the residential premises;*
- (c) allocation of the residential premises based on household size; and*
- (d) setting of a security deposit under section 14.*

29. The rental unit in this case is owned and administered by the landlord and the rental agreement is made between the landlord and the tenant, not between NLH and the tenant. Although the tenant's rent is subsidized by NLH, the landlord is not exempt from the rental increase legislation set out in section 16 of the *Act*, which states:

Rental increase

16. (1) Notwithstanding another Act, agreement, declaration, waiver or statement to the contrary, a landlord shall not increase the amount of rent payable by a tenant,

- (a) where the residential premises is rented from week to week or month to month, more than once in a 12 month period;*
- (b) where the residential premises is rented for a fixed term, during the term of the rental agreement; or*
- (c) where a tenant continues to use or occupy the residential premises after a fixed term has expired, more than once in a 12 month period.*

(2) Notwithstanding subsection (1), a landlord shall not increase the amount of rent payable by a tenant during the 12 month period immediately following the commencement of the rental agreement.

30. As this tenancy began on 20 December 2018, the landlord is prohibited from raising the rent until 20 December 2019. Accordingly, the landlord was not allowed to increase the rent from \$800.00 to \$810.00 on 01 May 2019 and I find that the tenant had been overcharged a total of \$60.00.
31. As the landlord is also seeking an order vacant possession of the rented premises, I find that he is entitled to a payment of rent to the date of the hearing and per diem thereafter.
32. Based on the records submitted at the hearing, I calculate the rent owing to be \$317.00 (\$84.00 for the period ending 30 September 2019 (\$134.00 according to the rent records less the overcharge of \$50.00 (5 months x \$10.00 per month) and \$233.00 for October 2019 (\$800.00 per month x 12 months = \$9600.00 per year ÷ 365 days = \$23.30 per day x 10 days = \$233.00)).

Decision

33. The landlord's claim for a payment of rent succeeds in the amount of \$317.00.
34. The tenant shall pay a daily rate of rent in the amount of \$23.30, beginning 11 October 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees

Relevant Submissions

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

Analysis

36. Section 15.(1) 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.

37. The minister has set 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.

Decision

38. As the tenant has been in arrears since 02 September 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

39. The landlord stated that he had issued the tenant a termination notice on 19 September 2019 and a copy of that notice was submitted with his application (█ #4). This notice was issued under 2 different sections of the *Residential Tenancies Act, 2018*: section 19 (notice where failure to pay rent) and section 24 (notice where tenant contravenes peaceful enjoyment and reasonable privacy). This termination notice had an effective termination date of 30 September 2019.

40. With respect to the issue of the tenant's failure to pay his rent, the landlord again pointed to the rent records showing the payments he had received since the tenancy began. According to these records, the tenant has been in arrears since the beginning of September 2019 and the arrears were not paid off prior to the effective terminate date of 30 September 2019.

41. Regarding the issue of interference with peaceful enjoyment, the landlord stated that there were 2 separate reasons why the notice was issued under that section.

42. Firstly, the landlord stated that there was an altercation between the tenant and the resident manager, █ over the summer after the tenant had been informed that he was not permitted to park an unregistered vehicle in the parking lot at the complex. █ testified that the tenant became angry and was shouting and using colourful language.

43. Secondly, the landlord stated that the resident manager had received complaints from other residents at the complex that the tenant had been seen shirtless in the common areas. █ testified that she had also seen the tenant on occasion without a shirt.

44. The landlord stated that the tenant had not vacated as required and he is seeking an order for vacant possession of the rented premises.

The Tenant's Position

45. The tenant claimed that █ knew that the truck belonged to him because she had seen him driving it on many occasions after he had purchased it.

46. He also stated that the reason people were complaining about him when he went shirtless was because he has numerous tattoos on his arms and torso.

47. The tenant also raised some concerns about other incidents that had been taking place at the complex. He stated that in the past week someone had been peeking in through the window of his apartment while his girlfriend was in her underwear. He also complained that the keys the landlord had been providing to the other tenants at the complex can be used to open other people's doors, even doors to apartments that are in different buildings.

Analysis

48. Regarding the issue of peaceful enjoyment, statutory condition 7.(a), 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:

...

7. Peaceful Enjoyment and Reasonable Privacy -

(a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

and according to section 24 of this Act:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is

terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

(2) In addition to the requirements under section 34, a notice under this section shall

- (a) be signed by the landlord;*
- (b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (c) be served in accordance with section 35.*

49. Based on the testimony given at the hearing, I was not persuaded that the tenant's behaviour had been so unreasonable that it had interfered with the peaceful enjoyment of other tenants at the complex or with the resident manager. As no other tenants were called as witnesses, the landlord's testimony about their complaints has to be regarded as hearsay.
50. With respect to the issue of the tenant sometimes being shirtless, it was not made clear to me how that would be considered unreasonable interference and the landlord acknowledged that there was no provision in the lease whereby the tenant had agreed to abide by a dress code.
51. I also found the testimony of █ to be unclear and she seemed to have trouble remembering the details of her interactions with the tenant or when certain events had taken place.
52. Regarding the issued of rent, section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

...

- (b) where the residential premises is*
 - (i) rented from month to month,*
 - (ii) rented for a fixed term, or*
 - (iii) a site for a mobile home, and*

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

53. According to the testimony and evidence submitted at the hearing, on 19 September 2019 the tenant was in arrears in the amount of \$563.00 and had been in arrears since the beginning of that month. The landlord received 1 payment of \$479.00 from NLH on 27 September 2019, reducing the amount owing to \$84.00, but that amount was not paid off before the termination date of 30 September 2019.
54. As the notice meets the timeframe requirements set out in section 19 of the *Act* it is a valid notice.

Decision

55. The landlord's claim for an order for vacant possession of the rented premises succeeds.
56. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issues 4: Hearing Expenses

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

Issue 5: Security Deposit

58. The landlord testified that the tenant paid a security deposit of \$600.00 on 07 January 2019 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, he shall retain that portion of the deposit as outlined in this decision and order.

Summary of Decision

59. The landlord is entitled to the following:
 - Authorization to retain \$412.00 of the security deposit, determined as follows:
 - a) Rent Owing\$317.00
 - b) Late Fees\$75.00
 - c) Hearing Expenses\$20.00
 - d) Total Owing to Landlord\$412.00

- A payment of a daily rate of rent in the amount of \$23.30, beginning 11 October 2019 and continuing to the date the landlord obtains possession of the rental unit,
- An order for vacant possession of the rented premises,
- The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

16 October 2019

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal