

Residential Tenancies Tribunal

Decision 20-0063-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:30 pm on 20 February 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to “the tenant”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the landlord”, participated by teleconference.
3. Interpretation services were provided by [REDACTED].

Issues before the Tribunal

4. The tenant is seeking the following:
 - An order for a refund of the security deposit in the amount of \$138.35,
 - An order for compensation for inconvenience in the amount of \$520.00, and
 - An order for a refund of rent in the amount of \$150.00.

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 is section 14 of the *Residential Tenancies Act, 2018*.

Issue 1: Security Deposit - \$138.35

Relevant Submissions

The Tenant's Position

7. The tenant and the landlord entered into a 1-year, fixed-term rental agreement commencing 01 November 2019 and a copy of the executed lease was submitted at the hearing (█ #1). The agreed rent was set at \$600.00 per month, but both the landlord and tenant agreed that for the first 3 months of the tenancy, the tenant would only have to pay \$500.00 per month.
8. The tenant stated that she had also paid a security deposit in the amount of \$600.00 and pointed out that this exceeded the allowable amount set out in the *Residential Tenancies Act, 2018*.
9. On 31 December 2019 the tenant informed the landlord that she would be terminating her rental agreement on 05 January 2020 and she vacated on that date. The tenant stated that she had an agreement with the landlord that she would pay \$80.65 for the first 5 days of January 2020 and that amount would be deducted from the security deposit.
10. The tenant complained that the landlord had only returned to her \$381.00 of the security deposit after she vacated and she calculates that the landlord still owes her \$138.35.
11. She testified that she had not entered into any written agreement with the landlord on the disposition of the security deposit after the tenancy had ended.

The Landlord's Position

12. The landlord claimed that it was agreed that the tenant would pay \$83.33 for the first 5 days of January 2020, not \$80.65.
13. Regarding the remainder of the deposit, the landlord stated that during the tenancy he had arranged for an electrician to go to the rental unit to repair an issue with the electricity that the tenant had been complaining about. He stated that the tenant was not at the unit, as agreed, to let the electrician in and even though no work was carried out on that day, he was charged \$60.00 for that visit.
14. He also stated that he was required to repair the washing machine after the tenant vacated and he additionally charged \$74.75 to have that appliance repaired.
15. In addition to the \$83.33 the landlord had deducted from the deposit for rent for January 2020, he also retained \$134.75 of that deposit for the electrician bill and for the repair to the washing machine.

Analysis

16. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

Security deposit

14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

(10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

(11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

17. I accept the tenant's testimony and evidence in this matter and I find that she had paid a security deposit of \$600.00 to the landlord. It was also not disputed that only \$381.00 of that deposit was returned to the tenant after she moved out.

18. It was not disputed that the landlord and tenant had agreed that the landlord could retain a portion of that deposit for rent for the first 5 days of January 2020. With respect to how much of that deposit would be retained, neither the landlord nor the tenant presented any evidence to the Board to corroborate their respective views that they had agreed to \$83.33, as the landlord claims, or \$80.65 as claimed by the tenant. On this matter, I side with the tenant as her claimed amount aligns with a standard way in which to calculate that daily rate: \$500.00 in rent for January 2020 ÷ 31 days x 5 days = \$80.65.

19. Regarding the remaining \$138.35, I find that there was no written agreement between the landlord and the tenant concerning that portion of the deposit. As the landlord has not made an application to the Director of Residential Tenancies

to determine its disposition he is required, as per subsection 14.(12), to refund that remaining amount of the security deposit to the tenant.

Decision

20. The tenant's claim for refund of the security deposit succeeds in the amount of \$138.65.

Issue 2: Refund of Rent - \$150.00

Issue 3: Compensation for Inconvenience - \$520.00

Relevant Submissions

The Tenant's Position

21. The tenant claimed that she had experienced 2 problems at the unit after she had moved in.

Washing Machine

22. The first problem concerned the washing machine. The tenant stated that this appliance malfunctioned on 15 December 2019 and she contacted the landlord about the matter, but he did not have it repaired during her tenancy.
23. The tenant argued that as the use of the washing machine is a service that is included in the rent she paid to the landlord, she is entitled to a rebate of rent.
24. She also claimed that because she did not have use of a washing machine, she had to wash her clothes elsewhere. She submitted a receipt at the hearing, issued by [REDACTED], which shows that the tenant had paid him \$120.00 to wash 15 loads of laundry between 15 December 2019 and 04 January 2020.

Baseboard Heaters

25. The tenant also complained that there was a problem with the heat at the unit. She stated that on 20 December 2019 she found that her apartment was cold and she discovered that there was no heat coming from the baseboard heaters.
26. The tenant then called Newfoundland Power who sent a technician to the unit the following day. The tenant stated that this technician discovered that there were smart switches connected to the electrical panel so that the electricity could be controlled remotely. The technician identified this as the problem and advised that the smart switch be disconnected.
27. The tenant stated that she then had a friend of hers switch the smart switch off, but she claimed that the landlord was able to reactivate the smart switch remotely. The tenant reported that when she turned off the wi-fi so that the

landlord could not control the smart switch, she was able to use the heat. But she complained that this was only a temporary fix and the landlord would later reconnect the wi-fi and smart switch and turn the heat off again.

28. The tenant claimed that she was without heat on 20 December, 21 December, 26 December, 27 December and 28 December 2019. She is also seeking a rebate of the rent she had paid for December 2019 as the unit was unheated for those 5 days.
29. Additionally, the tenant stated that because she was not able to control the heat and because she was fearful the landlord would switch the heat off while she was residing there, she had to find alternative accommodations. She submitted a receipt at the hearing, also from [REDACTED], showing that he charged her \$400.00 to rent a room for the period from 28 December 2019 to 01 January 2020.

The Landlord's Position

Washing Machine

30. The landlord stated that he lives in [REDACTED] and he claimed that it was very difficult for him to arrange for a repairman to visit the unit as it was near Christmas.
31. The landlord stated that he reached out to the tenant about suggesting a time that he could sent a repairman to the property and he claimed that he never did hear back from her and he assumed the issued had resolved itself.
32. A technician did inspect the washing machine after the tenant moved out and determined that a bearing is missing. He suspected that this issue was caused by the tenant overloading the washing machine.

Baseboard Heaters

33. The landlord stated that he was only informed about the baseboard heaters on 28 December 2019. He stated that he had arranged for a technician to visit the unit on 29 December 2019 and he informed the tenant of the time he would visit the unit so she could let him in for an inspection. The tenant did not show up for that visit.
34. The landlord denied that he had been using the smart switches to turn off the heat and he stated that he had the heaters inspected after the tenant moved and it was found that they were in good working order.
35. The landlord complained that the tenant should not have been tampering with the control panel or with the wi-fi as these devices were out-of-bounds to her.
36. Regarding the costs the tenant is seeking here, the landlord claimed that [REDACTED] is a friend of the tenant. He stated that the tenant presented no evidence showing

that █ was a landlord or that he was authorized to rent out a room to her and he also pointed out that the tenant did not submit into evidence any rental agreement with █.

Analysis

37. I accept the tenant's claim that the washing machine she was supplied with broke down on 15 December 2019 and she was without the use of that appliance for the remainder of her tenancy. No evidence was presented at the hearing showing that this malfunction was caused by the tenant.
38. As the use of that washing machine was included in the rent that the tenant paid to the landlord, I find that she is entitled to a 10% rebate of rent for the period from 15 December 2019 to 05 January 2020. I calculate that amount to be $\$33.07 ((\$500.00 \text{ for December 2019} \times \frac{1}{2} \times 10\%) + (\$80.65 \text{ for January 2020} \times 10\%))$.
39. I also find that the tenant would have incurred costs to wash her clothes elsewhere during this period and she is entitled to compensation for that inconvenience. I find it improbable that the tenant did 15 loads of laundry during that 20 day period. I find that compensation in the amount of \$50.00 is fair.
40. Regarding the heaters, not enough evidence was presented at the hearing to establish that they were broken or that landlord had been turning them off remotely. Without further evidence, it seems just as probable that the tenant had caused the heating failure by tampering with the wi-fi and the control panel. I just don't have enough evidence to make a determination.

Decision

41. The tenant's claim for a rebate of rent succeeds in the amount of \$33.07.
42. The tenant's claim for compensation for inconvenience succeeds in the amount of \$50.00.

Issue 3: Hearing Expenses

43. The tenant paid a fee of \$20.00 to file this application.
44. Policy with this Section is that if a party receives an award, their hearing expenses will be awarded also. However, the filing fee will not be awarded as a hearing expense if the amount of the award is less than the amount of the security deposit.
45. As the allowable security deposit in this tenancy was \$450.00 ($\$600.00 \times .75$), and as the tenant's claim succeeded in an amount less than that, her claim for hearing expenses does not succeed.

Summary of Decision

46. The tenant is entitled to the following:

• Refund of Security Deposit.....	\$138.65
• Rebate of Rent	\$33.07
• Compensation for Inconvenience	\$50.00
Total Owing to Tenant	<u>\$221.72</u>

27 May 2020

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal