

Residential Tenancies Tribunal

[REDACTED] Decision 20-0095-05
[REDACTED]

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:00 am on 19 November 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The applicant, [REDACTED], ([REDACTED]) hereafter referred to as the tenant participated in the hearing. *(Affirmed)*
3. The respondent, [REDACTED], ([REDACTED]) hereafter referred to as the landlord participated in the hearing and was represented by [REDACTED]. *(Affirmed)*
4. The details of the claim were presented as a written fixed term rental agreement with rent set at \$1500.00 per month and due on the 1st of each month and a security deposit in the amount of \$1125.00 was collected on or about 12 June 2019. The agreement was set to expire on 30 April 2020.
5. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The affidavit submitted by the tenant shows that the landlord [REDACTED] was served with the notice of this hearing on the **20 February 2020** by serving the application for dispute resolution document to the landlord by email: [REDACTED] and [REDACTED]
7. The affidavit submitted by the landlord shows that the tenant [REDACTED] was served with the notice of this hearing on the **10 March 2020** by serving the application for dispute resolution document to the tenant by email: [REDACTED]
8. Both parties were served copies of the Notice of Re-scheduled hearing from the Residential Tenancies Office.

Issues before the Tribunal

9. The tenant is seeking the following:
 - a) Compensation for Inconvenience **\$200.00**;
 - b) Hearing Expenses;
 - c) Return Balance of Security Deposit **\$575.00**
10. The landlord is seeking the following:
 - d) Validity of Notice
 - e) Compensation for Inconvenience **\$57.50**;
 - f) Damages **\$212.75**
 - g) Other **\$575.00**
 - h) Hearing Expenses;
 - i) Application of Security Deposit

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
12. Also relevant and considered in this case are:
 - a. *Policy 12-1: Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*, and;
 - b. *Policy 9-2 Claims and Counter Claims*, and;
 - c. *Policy 9-3 Claims for Damage to Rental premises*.
 - d. *Policy 9-4 Claims for Damage to a Tenants Personal Belongings/ Compensation for Inconvenience*.

Issue 1: Compensation for Damages - \$212.75

Relevant Submissions

Landlord Position

13. The landlord testified that when the property was recovered there was a lot of animal hair and dander issues in the property. The landlord further added that behind the stove was not cleaned. The landlord presented an invoice from Executive Cleaners to clean the unit and indicated there were no photos of the areas in question.

Tenant Position

14. The tenant disputes this portion of the claim and stated that his occupation is a veterinarian. The tenant testified that there was never any animals in the property and that any remnants of hair likely came from his clothes. The tenant presented photos of the property (**Exhibit T #1**) stating the property was in a clean condition. The tenant also stated that attached to the photos was a text conversation with the owner of [REDACTED] who clearly indicates all was fine from her perspective.

Analysis

15. I have reviewed the testimony and evidence of the landlord and tenant in this portion of the claim. The landlord applicant is required to establish three criteria for a successful claim as follows:
 - a. Show that the damage exists
 - b. Show that the respondent is liable
 - c. Show a valuation for the repair or replacement
16. The landlord in this matter has failed to support the existence of any damage that required a cleaning to be completed. This lack of supportive evidence means that the landlord has not met the required burden necessary for a successful claim. As such, the landlord's claim for damages fails.

Decision

17. The landlord's claim for damages fails.

Issue 2: Compensation for Inconvenience - \$57.50 – (L) and \$200.00 – (T)

Relevant Submissions

Landlord Position

18. The landlord testified that they were required to return to the property for a second final inspection and for this service they have charged \$57.50. The landlord states that the unit wasn't ready during their first inspection.
19. In response to the tenant's claim, the landlord testified that their records show that the property was visited on 12 January 2020 for the dishwasher and parts for same were ordered late January 2020. The landlord testified that they were in the property again on 15 January 2020 to assess for mold and further stated that they have a bill from Keith's Plumbing dated 06 February 2020 for the installation of the brackets to secure the dishwasher.
20. The landlord did not provide any of the company records indicated above as evidence in this matter.

Tenant Position

21. The tenant disputes the landlord's claim and again refers to the email/text from the owner (**Exhibit T # 1**) who indicates that everything was fine from her perspective.
22. The tenant is also claiming for compensation for the lack of use of a dishwasher from December 2019 to February 2020. The tenant testified that the maintenance person showed up in the 3rd week of December without the proper parts or materials. He stated he called again in January for repair to no avail. The tenant did not provide any written documentation requesting the repairs.
23. The tenant is seeking compensation in the amount of \$200.00 for the lack of the dishwasher usage.

Analysis

24. Both parties in this matter have made claims for inconvenience and have failed to support their version of events with any sort of documented proof. In essence there are two claims of a he said/she said nature.
25. I can understand the lack of evidence from a person not readily in the rental business. I am at a loss regarding the landlord's claim stating the existence of records and apparently quoting records regarding time frames and not submitting the records as evidence. As a property management company, the representatives should be well versed on the need for evidence. As both parties have failed to support their claims, both claims for inconvenience fails.

Decision

26. The landlord's and tenant's claims for compensation for inconvenience fails.

Issue 3: Other - \$575.00

Relevant Submissions

Landlord Position

27. The landlord is seeking compensation for:

- a. A leasing fee **\$375.00**
- b. An advertising fee **\$175.00**
- c. Snow Clearing **\$75.00**

28. The landlord testified that they encountered a leasing fee in the amount of \$375.00 as a result of the tenant breaking the lease and vacating prior to the end of the rental agreement. The landlord testified that this is a fee levied by the company to attempt to re-rent the property (scheduling appointments, showings and move-in). There were no records presented documenting the activities for the leasing.
29. The landlord stated that the property was re-rented for 01 May 2020.
30. The landlord further is claiming for an advertising fee in the amount of \$175.00 for the advertising of the property for re-rent. The landlord did not provide any receipts for the ads or any postings made on this property.
31. Lastly, the landlord is seeking compensation for snow clearing in February 2020. There was no records presented and the landlord added that the staff visited the property 1 time.

Tenant Position

32. The tenant disputes this portion of the claim stating that the landlord did not post any ads outside of their own web site. The tenant stated that he posted ads of the property for rent on the classifieds sites.
33. The tenant further added that the owners found tenants for the property for 01 February 2020 and therefore [REDACTED] did not incur any expenses.
34. The tenant further added that he was aware of 5 prospective tenants and they were aware of [REDACTED] and couldn't work with them.

35. The tenant disputes the snow clearing charge as it is his contention that he was not responsible for the property after 01 February 2020.

Analysis

36. The standard of proof in this portion of the claim is the same as a damage portion. The applicant is required to substantiate their claim. It is not an automatic award of leasing fees and advertising fees for an early leaving of the tenancy. The landlord is required to show that they actually incurred the expenses claimed for advertising. Similarly, the landlord is required to establish that there was an expense actually incurred to lease the property.
37. Again, as with previous sections, the landlord has failed to adequately demonstrate that they have incurred reasonable expenses for the claim being made. There was no evidence led to show when the property was re-rented, there was no verification of ads posted, there was no verification of any reasonable fees incurred.
38. As a result of the lack of supporting documentation, I find that the landlord's claim for leasing fees and advertising fees fails.

Decision

39. The landlord's claim for advertising and leasing fees fails.

Issue 4: Validity of Notice

Relevant Submissions

Landlord Position

40. The landlord is testing the validity of the termination notice submitted by the tenant (**Exhibit L #1**).
41. The landlord testified that the tenant could not issue a termination notice until 01 April 2020 as per section 18 of the Residential Tenancies Act, 2018.

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

(c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.

42. The landlord has not made any claim for rent as a result of the notice.

Tenant Position

43. The tenant disputes this portion of the claim stating that he issued a termination notice 2 months before vacating the unit as required.

Analysis

44. The Legislation is clear in this regard. The notice period required by a tenant is not less than two month **before the end of the fixed term agreement**.
45. The tenant issued a notice by email in December and stated in the email that it was retroactive to 01 December 2019. This method of service is not permitted under the legislation and every notice issued is date specific and the technical requirements are required to be met in order to be considered valid.
46. For the benefit of both parties, the notice period required by a tenant is the last two months of the fixed term agreement. As the tenant did not adhere to the technical requirements of the notice as set out in section 18, the notice issued is determined not valid.

Decision

47. The termination notice issued by the tenant dated 03 December 2019 is determined to be not valid.

Issue 4: Application/Refund of Security Deposit

Landlord Position

48. The landlord testified that a security deposit in the amount of \$1125.00 was paid on the property on or about 12 June 2019. The landlord's claim is seeking to apply the balance of the security deposit in the amount of \$575.00 against the order issued by the tribunal.
49. The landlord acknowledges holding the balance of the security deposit in the amount of \$575.00.

Tenant Position

50. The tenant is seeking a refund of the balance of the security deposit paid in the amount of \$575.00.

Analysis

51. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$1125.00 and the landlord refunded \$550.00 of the deposit to the tenant.
52. The landlord's claim has been unsuccessful as indicated above. The security deposit plus accrued interest is \$575.00 as the interest rate for 2019 – 2020 is set at 0%.
53. The landlord's claim is unsuccessful. The security deposit is an asset of the tenant to be held against any loss incurred by the landlord attributed to the tenancy. In this matter it has been determined that there was no attributable loss and as such, the tenant is entitled to a refund of the balance of the security deposit as outlined in the attached order.

Decision

54. As the landlord's claim above has been unsuccessful, the landlord shall refund the security deposit being held to the tenant as outlined in the attached order.

Issue 5: Hearing Expenses

Landlord Position

55. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (████████) (**Exhibit L # 3**). The landlord is seeking this cost.

Tenant Position

56. The tenant paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (████████) (**Exhibit T # 2**). The tenant is seeking this cost.

Analysis

57. I have reviewed the testimony and evidence of the landlord and tenant in this matter. The expenses incurred by the landlord and tenant are considered a reasonable expense and are provided for with in *Policy 12-1 Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*. The landlord's claim has not been successful and as such, I find the landlord is responsible to cover the reasonable expenses of the tenant and their own hearing costs.

Decision

58. The landlord shall pay the reasonable expenses of the tenant in the amount of \$20.00.

Summary of Decision

59. The tenant is entitled to the following:

a)	Refund of Security Deposit	\$575.00
b)	Hearing Expenses	<u>20.00</u>
c)	Total owing to Tenant	<u>\$595.00</u>

21 December 2020

Date


Michael Greene
Residential Tenancies Tribunal