

Residential Tenancies Tribunal

Decision 20-0114-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 am on 20 August 2020 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

3. The landlords are seeking the following:
 - An order for compensation for inconvenience in the amount of \$407.40,
 - An order for a payment of rent in the amount of \$1400.00,
 - An order for a payment of late fees in the amount of \$75.00,
 - An order for a payment of "other" expenses totalling \$116.91, and
 - Authorization to retain the security deposit of \$600.00.

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 is section 15 of the *Residential Tenancies Act, 2018*, policy 9-3: Claims for Damage to Rental Premises and Rules 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. 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 a 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. Landlord1 submitted an affidavit with her application stating that she had served the tenant with notice of the hearing, by e-mail, on 24 February 2020 and a copy of that e-mail was also submitted with her application. Landlord1 also submitted a copy of a text-message exchange she had had with the tenant in which she was provided with that e-mail address. 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 Inconvenience - \$407.40

Relevant Submissions

7. Landlord1 stated that she had entered into an 8-month, fixed-term rental agreement with the tenant on 01 November 2019 and a copy of the executed lease was submitted with their application. The agreed rent was set at \$900.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$600.00.
8. Landlord1 testified that she issued the tenant a notice to enter on 03 January 2020 for the purposes of carrying out an inspection of the rental unit and she entered on the following day and discovered that the unit was vacant. She stated that she then posted a Notice of Abandonment and she took possession of the property on 06 January 2020.
9. Landlord1 complained that after the tenant vacated she was required to carry out some cleaning at the unit as well as some snow clearing.
10. Regarding the cleaning, landlord1 stated that the tenant had left behind several garbage bags on the back deck which had been buried in snow. She pointed to her submitted photographs to support her claim. Landlord1 stated that she was required to shovel out that garbage and have it removed and she is seeking compensation for 2 hours of her personal labour.
11. She also complained that the tenant had left behind a mess inside the apartment and she is seeking compensation for an additional 12 hours of her labour. She testified that the tenant had left behind garbage, recycling and garbage bags inside the apartment which needed to be removed and she also testified that extensive cleaning was required. She stated that the tenant had been smoking at the property and she found numerous cigarette butts and the toilet was covered in cigarette ashes. She testified that the tenant had also left behind food in the refrigerator and the cupboards and there was traces of kitty litter found throughout the unit. In support of her claim, landlordin1 again pointed to her

photographs, which were taken after the tenant vacated, showing the condition of the property at that time.

12. Landlord1 also pointed out that as a condition of their rental agreement, the tenant was responsible for snow clearing. She claimed that no snow clearing had been carried out during her tenancy. Furthermore, the landlord pointed out that there were 2 snow storms during the month of January 2020, one on 12 January and the other on 17 January 2020, which necessitated a total of 7 hours of shovelling on her part. Landlord1 argued that as this tenancy was not supposed to end until 31 July 2020, and as she did not yet have a new tenant in place for January 2020, the tenant is responsible for compensating her for her personal labour to keep the driveway and walkway clear during January 2020.

Analysis

13. I accept landlord1's testimony and evidence in this matter and I find that the landlords were required to carry out extensive cleaning and snow clearing after the tenant vacated and they were also required to remove garbage from the property.
14. Based on landlord1's testimony and her photographic evidence, I agree with her that they are entitled to compensation for 21 hours of their personal labour, calculated at the prescribed rate of \$19.40 per hour.

Decision

15. The landlords' claim for compensation for inconvenience succeeds in the amount of \$407.40 (\$19.40 per hour x 21 hours).

Issue 2: "Other" Expenses - \$116.91

Relevant Submissions

16. Landlord1 stated that the tenant moved out of the unit in early January 2020 but she failed to return the keys to them. The landlords stated that, as a result, they were required to purchase a new lock for the exterior door and landlord1 submitted a receipt showing that she was charged \$45.99.
17. Landlord1 also stated that because the tenant had failed to carry out the snow removal during her tenancy and during the month of January 2020, there was a buildup of ice on the walkway and in the driveway. She pointed to a second receipt showing that she had purchased sand to cover these areas at a cost of \$14.93.
18. She also argued that she was entitled to the costs she had incurred in travelling to and from the rental unit during the month of January 2020 as well as for the costs of the trips she made to the hardware store, to this Section's offices in

Mount Pearl and to the dump. Based on a rate of \$0.55 per kilometer, landlord1 calculates that she is entitled to compensation in the amount of \$55.99.

Analysis

19. Regarding the costs for purchasing the new lock, that claim does not succeed. Landlords are expected to change the locks at the rental unit after the end of every tenancy, at their own expense, for the safety and security of any new tenants moving into the premises. A landlord may only charge the tenant for the costs of replacing a lock if it had become damaged through some deliberate or negligent act on the part of the tenant.
20. With respect to the purchase of the sand for the build up of ice, I find that the landlord is entitled to those costs. I have determined in the previous section that the tenant had failed to live up to her obligation, as set out in her lease, to keep the driveway and walkway clear of snow and ice.
21. Regarding the travel costs, I find that the landlords are entitled to compensation for 1 hour of their time to make 1 trip to the dump to dispose of the garbage left behind by the tenant: \$19.40. The costs incurred in traveling to the rental unit or to this Section's offices are costs in the normal course of business for a landlord.

Decision

22. The landlords' claim for "other" expenses succeeds in the amount of \$34.33 (\$14.93 + \$19.40).

Issue 3: Rent - \$1400.00

23. Landlord1 stated that the tenant moved into the unit on 01 November 2019 and she had paid her full rent of \$900.00 for that month. However, she only paid \$400.00 for the month of December 2019, leaving a balance of \$500.00 for that month.
24. Landlord1 also argued that even though the tenant had abandoned the unit in early January 2020, she is still responsible for the rent for that month as she had not given the landlords notice that she was moving out and because her lease was not set to expire until the end of July 2020. She testified that she had advertised the unit for re-rent in January 2020 and she found new tenants for February 2020. The unit sat vacant during January 2020 and the landlords suffered a loss of rental income during that month.
25. The landlords are seeking an order for a payment of rent in the amount of \$1400.00 (\$500.00 for December 2019 and \$900.00 for January 2020).

Analysis

26. I accept landlord1's testimony in this matter and I find that the tenant had not paid rent as required. As the lease was not set to expire until 31 July 2020 and as the landlords were unable to secure new tenants until 01 February 2020, I agree with her that she is entitled to a payment of rent in the amount of \$1400.00 for the period ending 31 January 2020.

Decision

27. The landlords' claim for a payment of rent succeeds in the amount of \$1400.00.

Issue 4: Late Fees - \$75.00

Relevant Submissions

28. The landlords have assessed late fees in the amount of \$75.00.

Analysis

29. Section 15.1(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.

30. 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.

31. As the tenant has been in rental arrears since 02 December 2019, the landlords are entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

32. The landlords' claim for late fees succeeds in the amount of \$75.00.

Issue 5: Security Deposit

33. Landlord1 stated that the tenant had paid a security deposit of \$600.00 on 28 October 2019 and receipt of that deposit is acknowledged in the submitted lease. As the landlords' claim has been successful, they shall retain that security deposit as outlined in this decision and attached order.

Issue 6: Hearing Expenses

34. As the landlords' claim has been successful, the tenant shall pay their hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

35. The landlords are entitled to the following:

a) Compensation for Inconvenience	\$407.40
b) "Other" Expenses	\$34.33
c) Rent.....	\$1400.00
d) Late Fees	\$75.00
e) Hearing Expenses	\$20.00
f) LESS: Security Deposit	(\$600.00)
g) Total Owing to Landlords.....	<u>\$1336.73</u>

22 October 2020

Date

John R. Cook
Residential Tenancies Tribunal