

## Residential Tenancies Tribunal

[REDACTED] Decision 20-0161-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 11:12 am on 11 September 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", was represented at the hearing by [REDACTED] ("[REDACTED]").
3. The respondent, [REDACTED], hereinafter referred to "the tenant", also participated.
4. Interpretation services were provided by [REDACTED].

### Issues before the Tribunal

5. The landlord is seeking the following:
  - An order for compensation for damages in the amount of \$959.24, and
  - An order for a payment of "other" expenses totalling \$1525.56.

### Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this case is section 50 of the *Residential Tenancies Act, 2018*.

### Preliminary Matters

8. This is the second application this Board has heard concerning this tenancy. The tenant had filed a previous application ([REDACTED]) which was heard on 20

February 2020. As a result of that hearing, the landlord was ordered to pay the tenant \$221.72, determined as follows:

- Refund of Security Deposit.....\$138.65
- Rebate of Rent .....\$33.07
- Compensation for Inconvenience .....\$50.00

That decision was rendered on 27 May 2020.

### **Issue 1: Compensation for Damages - \$959.24**

#### **Relevant Submissions**

##### The Landlord's Position

9. The landlord and tenant had entered into a 1-year, fixed-term lease which commenced on 01 November 2019. The agreed rent was set at \$500.00 per month for the first 3 months of that lease, and the tenant had paid a security deposit of \$600.00.
10. The tenant vacated the unit on 05 January 2020. After the tenant vacated, the landlord had returned to her \$381.00 of the security deposit, and retained \$219.00.
11. As a result of the previous hearing, cited above in Preliminary Matters, it was found that the tenant had agreed to pay a pro-rated rent of \$80.65 for those first 5 days of January 2020 and the landlord was therefore authorized to retain that amount of the security deposit. As there was no written agreement between the landlord and the tenant on the disposition of the remaining \$138.35, he was ordered to return that amount to the tenant.
12. It was ■'s belief that the landlord was entitled to retain, roughly, that portion of the security deposit for charges he had incurred to have a washing machine inspected and to have an electrician carry out an inspection at the rental unit. Through this portion of his claim, ■ is revisiting those 2 items.
13. Also, as a result of the previous hearing, the tenant was awarded \$83.07 in compensation for the inconvenience she had suffered as a result of having to live without the use of a washing machine for a period of 20 days. ■ is also seeking to revisit that decision as it the landlord's continued belief that the tenant was responsible for the damage caused to the washing machine. Through this portion of her claim ■ is also seeking the costs of purchasing and installing a new washing machine.
14. The total breakdown here is as follows:

- Washer Inspection.....\$74.75
- Electrical Inspection Call .....\$60.00
- New Washer.....\$724.49
- Washer Installation .....\$100.00
  
- Total .....\$959.24

15. Regarding the issue of the washing machine, I informed [REDACTED] at the hearing that I would not deal with that matter and I rehearse my reasons in paragraphs 21 and 22, below.
16. With respect to the electrical inspection call, [REDACTED] stated that the tenant had informed the landlord that there was an issue with the baseboard heaters on 29 December 2019. [REDACTED] testified that the landlord had arranged for a technician to go to the unit to assess the issue and he had made arrangements with the tenant to meet him there at a designated time.
17. [REDACTED] stated that the tenant did not meet the technician, as agreed, and after he had waited around for 15 minutes, he departed. Although no inspection was carried out at that designated time, the technician nevertheless charged the landlord a service fee of \$60.00 for that visit. A copy of that invoice was submitted with [REDACTED]'s application.

#### The Tenant's Position

18. The tenant submitted a copy of an e-mail exchange she had had with the landlord on 29 December 2019. It reads as follows:

Landlord, 10:21 AM: *the technician will visit you today. pls wait at home and open the door. Thanks.*

Tenant, 12:48 PM: *I can't stay in a cold place all day. Please give me his contact information and I would contact him directly.*

Landlord, 1:46 PM: [REDACTED]

Landlord, 5:07 PM: *the electrical technician has got there at 2:30, but you are not there. this is another technician, [REDACTED], he will be there around tonight. pls call him. If you are still not there, you must be responsible for your behavior.*

19. The tenant argued that the landlord had not made an appointment with her to be at the unit at any specific time to meet the technician and she was unaware of when he would show up. She also claimed that she was unable to stay at the rental unit that day because the heaters weren't working and it was too cold.

20. She also submitted a screenshot of her phone records showing that she had telephoned the technician at 2:31 PM. She claimed that she was not home at that time and she was too far away and could not get there to meet him.
21. The tenant further argued that she was free to go wherever she pleased that day and it was not her responsibility to meet the landlord's contractors.

## **Analysis**

22. With regards to the washing machine, I pointed out to [REDACTED] that as this was a matter that had been adjudicated upon through the tenant's previous application, it was not a matter that I would be addressing for a second time. Through the tenant's application, she was seeking compensation for the inconvenience she suffered as a result of the washing machine breaking down and her being unable to launder her clothes for a period of 20 days. At that hearing, the landlord argued that the tenant had caused the washing machine to break and, therefore, it was his view that he could not be held responsible for the costs the tenant was seeking through her application. In my decision, I found in favour of the tenant. I concluded that the landlord had not established that the tenant had caused any damage to the washing machine and I awarded her \$83.07 in compensation. Given that the tenant had not damaged the washing machine, I cannot, through this application, award the landlord the costs of replacing and installing a new one.
23. Although I understand that the landlord does not agree with the decision I made at that time, the Dispute Resolution process administered by this Tribunal is not the appropriate forum to review the decisions of its adjudicators nor an appropriate forum to re-hear matters that have already been adjudicated upon. If the landlord believes that I had made an error in my decision, in law or in jurisdiction, section 50 of the *Residential Tenancies Act, 2018* states that he may appeal to the Supreme Court of Newfoundland and Labrador within 30 days after receiving that order ([REDACTED]). According to this Section's records, that decision was sent to the landlord on 27 May 2020, by e-mail, and again, as per his request, on 20 July 2020.
24. With respect to the \$60.00 the landlord was charged for the missed appointment with the technician, I also find that that claim does not succeed. No evidence was submitted by the landlord to establish that the tenant had agreed to meet the technician at 2:30 PM on 29 December 2019 and the tenant's evidence shows that earlier in the day she had already informed the landlord that she would not be staying at the unit that day while the heat was not functioning.
25. Furthermore, I am of the view that it is the landlord's responsibility, not the tenant's, to coordinate with maintenance workers and to allow these workers access to their rental properties. That is, the landlord, or a representative of his, ought to have met the technician to allow him access, not the tenant.

## Decision

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

### Issue 2: "Other" Expenses – \$1525.56

#### Relevant Submissions

##### The Landlord's Position

27. █ stated that there were issues with electricity at the rental unit for which the tenant was responsible and as a result, the landlord's wife and son had to make a trip to St. John's, from █, to deal with the issue. That trip lasted from 07 January to 27 January 2020. The landlord submitted the following breakdown of the costs the landlord had incurred as a result of that trip:

- Airfare to St. John's ..... \$327.98
- Return Airfare to █ ..... \$597.58
- Living Costs for 20 days ..... \$600.00

With his application the landlord had also submitted copies of his receipts for the airfare and he also claimed that he was entitled to a living allowance of \$30.00 per day while she was in St. John's.

28. █ claimed that she was required to make this trip to St. John's because the washing machine had broken and also because the tenant had been tampering with the electricity and Wi-Fi at the apartment. She additionally complained that the tenant had falsely accused the landlord of remotely turning off her heat and that she had been spreading lies about him on Facebook. She also testified that she had received a call from Newfoundland Power informing her that the tenant had also been making trouble for them.

29. █ argued that, out of concern for her property, she had to travel to St. John's to address these matters. She is seeking an order for a payment of \$1525.56 in compensation for the costs that she had incurred, as detailed above.

##### The Tenant's Position

30. The tenant alleged that the landlord had "smart switches" in the electricity control panel and she claimed that he had been remotely turning off the heat in the apartment. The tenant denied that she had been spreading lies on Facebook or that she had been trying to cause trouble for the landlords. Rather, she testified that she reached out to as many different groups as possible to try to have this matter addressed. She contacted the Residential Tenancies Board, she called the police, she contacted Newfoundland Power and she also made inquiries in the Newfoundland Tenant & Landlord Support Group on Facebook.

## **Analysis**

31. I also find that this portion of the landlord's claim does not succeed and I have reached that decision without having to make any determination on the question of who, the landlord or the tenant, is ultimately responsible for the issue with the electricity and the heating.
32. Rather, my decision is based on the principle that a tenant cannot be held responsible for the costs a landlord incurs in travelling to and from his rental properties to deal with tenant-related matters or to deal with maintenance issues. Those costs are considered to be costs incurred in the normal course of doing business as a landlord.
33. Typically, most landlords live in the same city or town as their rental properties and these costs are usually quite minimal. I appreciate that in this case the landlord lives in a different province from this particular rental property, but the tenant cannot be held responsible for his decision to reside so far from his place of business. I am also of the view that the landlord could have mitigated these costs by hiring a representative to act his behalf and who resides closer to his place of business.

## **Decision**

34. The landlord's claim for travel costs does not succeed.

20 November 2020

Date

  
John R. Cook  
Residential Tenancies Tribunal