

## Residential Tenancies Tribunal

Application [REDACTED]  
Application [REDACTED]

Decision 20-0574-05

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at **9:30 am** on **24 March 2021** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via Bell Teleconferencing System.
2. The applicant, [REDACTED] hereafter referred to as the tenant, participated in the hearing. (*Affirmed*).
3. The respondent, [REDACTED] hereafter referred to as the landlord, participated in the hearing. (*Affirmed*).
4. The details of the tenancy are a written fixed term tenancy commencing 02 September 2020 and set to expire on 31 December 2020. Rent was set at \$475.00 with utilities included and a security deposit in the amount of \$250.00 collected on this tenancy on 02 September 2020. This is a rental of a bedroom with shared common access to the main living areas and washroom.
5. In a proceeding under the *Residential Tenancies Act*, 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 landlord shows that the tenant was served with the notice of this hearing on the **03 March 2021** by serving the original documents to the tenant by email: [REDACTED] and attaching a copy of the sent message and verification of the email address.

The affidavit submitted by the tenant shows that the landlord was served with the notice of this hearing on the **25 January 2021** by serving the original documents to the landlord by registered mail: [REDACTED] and attaching a copy of the Canada Post Tracking.

The landlord was absent when the hearing was called. A phone call was placed to the landlord at [REDACTED] and contact was made. The landlord connected with the conference and both parties attended the hearing via teleconference.

## Issues before the Tribunal

7. The landlord is seeking the following:
  - a) Payment of rent owing **\$475.00**;
  - b) Compensation for Damages **\$267.26**;
  - c) Hearing expenses.
  - d) Application of Security Deposit **\$250**
8. The tenant is seeking the following:
  - e) Refund of Security Deposit **\$250.00**

## Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
10. Also relevant and considered in this case are Sections 19, 24, 34 and 35 of *the Act*, and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

## Issue 1: Rent Owing - \$475.00

### Relevant Submissions

#### Landlord Position

11. The landlord stated that the rental was a rental of a bedroom with shared common living areas and washroom. The landlord indicated she had entered into a fixed term rental agreement with the tenant set to expire on 31 December 2020. The agreed rent is set at \$475.00 per month and due on the 1<sup>st</sup> day of each month with a security deposit in the amount of \$250.00 collected on this tenancy on or about 02 September 2020. The landlord stated that she could not find the rental agreement for this tenancy.
12. The landlord testified that the tenant failed to provide a proper notice of termination but instead sent a text on or about 15 November 2020 that she was vacating on 30 November 2020 (**Exhibit L # 2**). The landlord is seeking December 2020 rent (**\$475.00**) as rent in lieu of notice. The landlord testified that she attempted to re-rent the property immediately by placing a sign on the property, posting on social media classifieds and Kijiji.

#### Tenant Position

13. The tenant disputed the claim of the landlord stating that she provided notice by text on 15 November 2020 and vacated on 30 November 2020.

### Analysis

14. I have reviewed the testimony and evidence of the landlord and tenant in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenant.
15. This claim is a claim for rent based on the lack of proper notice. As such, this decision will review what constitutes proper notice. Prior to this, it must be determined what type of rental agreement is in play as this will determine the notice required.
16. The landlord indicated that a written fixed term agreement was in place but has not submitted the agreement as evidence and indicated that she can't find the document. The tenant indicated that there was a written agreement but there was no indication if it was a fixed term or monthly. As such, I will accept that this agreement is a written monthly agreement for the basis of this decision.

17. Section 18 and 34 of the *Residential Tenancies Act, 2018* outlines the requirements for proper notice on a month to month tenancy and reads:

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

*(b) not less than one month before the end of a rental period where the residential premises is rented from month to month.*

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

*(a) be signed by the person providing the notice;*

*(b) be given not later than the first day of a rental period;*

*(c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and*

*(d) be served in accordance with section 35.*

#### **Requirements for notices**

*34. A notice under this Act shall*

*(a) be in writing in the form prescribed by the minister;*

*(b) contain the name and address of the recipient;*

*(c) identify the residential premises for which the notice is given; and*

*(d) state the section of this Act under which the notice is given.*

18. The notice provided was clearly not 1 month nor was it provided at the end of the rental period. Additionally to section 18 requirements, there are requirements under section 34 that have also not been adhered to, as highlighted above.
19. For the reasons provided, I find that the notice provided by the tenant is not a proper notice under the Residential Tenancies Act, 2018. I further find that the landlord did mitigate her potential loss by placing a for rent sign on the rental premises, posting on social media classifieds and Kijiji. The landlord indicated she re-rented the property for 01 April 2021.
20. With respect to the rent in lieu of notice being claimed, I agree with the landlord that rent for December 2020 is owed. Rent is required to be paid by the tenant for use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. I find the tenant responsible for rent for December 2020 in the amount of **\$475.00**.

## Decision

21. The landlord's claim for rent succeeds as follows:
- a) Rent owing for December 1 - 31, 2020 ..... \$475.00
  - b) Total Arrears ..... **\$475.00**

### Issue 3: Compensation for Damages \$267.26

#### Landlord Position

22. The landlord is seeking compensation for damages of the rented premises located at [REDACTED]
23. The landlord testified that as this is a situation where she rents rooms and the parties share common living areas, she is seeking only ½ of the costs of the damages in the amount of **\$267.26** ( $\$534.52 \div 2$ ).
24. The landlord submitted photos of the property taken on 01 December 2020 to demonstrate the damages (**Exhibit L # 1**), a copy of a cleaning receipt from N. Hiscock in the amount of \$250.00 (**Exhibit L # 3**), a receipt from [REDACTED] for garbage removal in the amount of \$75.00 (**Exhibit L # 4**) and a receipt from [REDACTED] in the amount of \$209.52 (**Exhibit L # 5**).
25. The landlord described the property when it was recovered and full of garbage in the bathroom and kitchen, etc., and needed to be cleaned. Further, she described the fridge as having the rails on the door broken and no longer useable until repaired. The landlord referred to the photos (**Exhibit L # 1**) for the damages described.

#### Tenant Position

26. The tenant disputed the landlord's claim stating that the garbage in the property belonged to the other tenant renting the other room. The tenant emphatically stated that there was at least 4 bags of garbage in the kitchen when she moved in.
27. Regarding the condition of the fridge, the tenant also stated that the fridge was in this condition when she took possession of her room.

## Analysis

28. I have reviewed the evidence of the landlord and tenant in its entirety. After considering all the evidence and testimony, it is clear that on the day the photos were taken, the property was not clean to a reasonable standard and there was some damage to the fridge door. That is not to say, however, that the tenant in question holds the liability for these concerns.
29. In any damage claim the applicant is required to successfully support three tests as outlined:
  - a. show that a damage exists;
  - b. show that the respondent is liable for the damages and;
  - c. show a cost for the repair or replacement of the damages.
30. The landlord's photographs presented show clearly that the property was not clean by any stretch of the imagination. They also show that the fridge was damaged. However, there was no established baseline condition of the property prior to this tenant moving into the property. This baseline condition is critical in determining the liability issue.
31. The tenant disputes the claims of the landlord stating that the property was in this condition when she moved into the property. It is not the tenant's burden to establish or support the claim of the landlord for damages, but it is the landlord's burden to show tenant's liability.
32. The tenant claimed the fridge was broken prior to arriving and the landlord has not established that it wasn't. Similarly, the same was argued about the garbage. The tenant claimed it was that of the other tenant.
33. In situations where rooms are rented and common areas are damaged, there are multiple possibilities as to where the responsibility for the damages rest. Ultimately, it is the applicant's responsibility to show beyond the balance of probabilities that the claim is adequately supported. I find that in this matter, the landlord has not supported her claim that this tenant in question was responsible for the damages claimed. As such, the landlord's claim for damages fails.

## Decision

34. The landlord's claim for damages fails.

## **Issue 4: Application/Refund of Security Deposit**

### Landlord Position

35. The landlord testified that a security deposit in the amount of \$250.00 was paid on the property on or about 02 September 2020. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.
36. The landlord's acknowledges holding the security deposit in the amount of \$250.00.

### Tenant Position

37. The tenant is seeking to have the security deposit refunded.

## **Analysis**

38. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$250.00.
39. The landlord's claim has been partially successful as indicated above. The security deposit plus accrued interest is \$250.00 as the interest rate for 2020 - 2021 is set at 0%.
40. The landlord's claim is partially successful. 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 an attributable loss and as such, the landlord is entitled to apply the security deposit against the loss as outlined in the attached order.

## **Decision**

41. As the landlord's claim above has been mostly successful, the landlord shall apply the security deposit being held against the loss as outlined in the attached order.

## **Issue 5: Hearing Expenses**

### Landlord Position

42. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (**Exhibit L # 6**). The landlord is seeking this cost.

Tenant Position

43. The tenant paid a fee in the amount of \$25.00 as a fee for a commissioner service (**Exhibit T # 1**). The tenant paid a fee for the service of documents by Canada Post (**Exhibit T # 2**) in the amount of \$14.02.

**Analysis**

44. I have reviewed the testimony and evidence of the landlord and tenant in this matter. The landlord's claim has been successful in part and the expenses incurred by the landlord 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*. As such, I find the tenant is responsible to cover these reasonable expenses of the landlord.

**Decision**

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

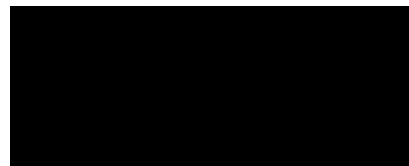
**Summary of Decision**

46. The landlord is entitled to the following:

a)	Rent Owing .....	\$475.00
b)	Hearing Expenses .....	\$20.00
<b>c)</b>	<b>Sub-total .....</b>	<b>\$495.00</b>
d)	<b>LESS: Security Deposit.....</b>	<b>(\$250.00)</b>
e)	<b>Total Owing to Landlord.....</b>	<b><u>\$245.00</u></b>

08 April 2021

**Date**



**Michael Greene**  
**Residential Tenancies Tribunal**