

Residential Tenancies Tribunal

Decision 19-0090-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:00 am on 06 November 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The tenant, [REDACTED], hereafter referred to as the tenant, participated in the hearing (*Sworn*).
3. The landlord, [REDACTED], hereafter referred to as landlord1, participated in the hearing (*Affirmed*).
4. The landlord, [REDACTED], hereafter referred to as landlord2, participated in the hearing (*Affirmed*).
5. The details of the claim were presented as a written monthly rental agreement with rent set at \$600.00 per month and due on the 1st of each month. A security deposit in the amount of \$400.00 was collected on the tenancy on or about 18 April 2018. The tenant indicated that a termination notice was issued to the landlords on 23 August 2019 for the intended termination date of 28 August 2019 under Section 24 of the *Residential Tenancies Act, 2018*.
6. 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

7. The affidavit submitted by the tenant shows that landlord1, was served with the notice of this hearing on the **10 September 2019** by serving the documents to landlord1 personally at [REDACTED] and has had **56 days** to provide a response.
8. The affidavit submitted by the tenant shows that landlord2, was served with the notice of this hearing on the **10 September 2019** by serving the documents to landlord1 personally at [REDACTED] and has had **56 days** to provide a response.
9. There was no counterclaim filed by the landlord.
10. The landlords acknowledged damage to a personal item of the tenant in the amount of **\$20.70**.

Issues before the Tribunal

11. The tenant is seeking the following:
 - a) Refund of Security Deposit **\$400.00**;
 - b) Compensation for Inconvenience **\$402.19**
 - c) Hearing Expenses **\$20.00**

Legislation and Policy

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

Issue 1: Refund of Security Deposit - \$400.00

Relevant Submissions

Tenant Position

14. The tenant stated that she had entered into a written monthly rental agreement with the landlords which commenced on 15 April 2018. The agreed rent was set at \$600.00 per month with rent due on the 1st day of each month. The tenant testified that a security deposit in the amount of \$400.00 was paid on 18 April 2018.

Landlord Position

15. The landlords acknowledged the payment of the security deposit by the tenant and that they did not file a counterclaim to the tenant's claim.

Analysis

16. I have reviewed the testimony and evidence of the tenant and landlords in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) did the tenant pay a security deposit.
17. The tenant and landlords have acknowledged that a security deposit in the amount of \$400.00 was paid on or about 18 April 2018 by the tenant. Further, there was no counterclaim filed by the landlords within the 10 day time frame allowed for by Section 14 (10) & (11) of the *Residential Tenancies Act, 2018* in order for the landlords to have a claim against the security deposit.
18. This failure of the landlords to file a counterclaim does not prohibit the landlords from filing a future claim for a loss, however, the landlords no longer has a claim against the security deposit and shall return the deposit to the tenant.

Decision

19. The tenant's claim for refund of security deposit succeeds:
 - a) Refund of Security Deposit \$400.00

Issue 2: Compensation for inconvenience - \$402.19

Relevant Submissions

Tenant Position

20. The tenant stated that as a result of a leak in a pipe in the laundry room, the landlords completed some repairs which involved removing some drywall and replacing a waterline. This activity required that the washer and dryer had to be moved out of position. The tenant testified that prior to the repairs being completed she did not formally notify the landlords of the required repairs. She stated that the repairs seemed to take forever and she felt inconvenienced. The tenant submitted into evidence photos of the property to demonstrate how the property was during the repairs (**Exhibit T # 1**).
21. The tenant is seeking compensation in the amount of \$402.19 representing a rebate of rent from August 11 – 31, 2019. The tenant's evidence is such that the landlords were requesting the tenant to remove personal items from the area on August 6 – 11, 2019. It is obvious that no repairs could be started prior to the

tenant removing personal items from the work area. The tenant testified that she couldn't stay in the unit because the living room wasn't accessible and she never had access to the laundry facilities.

22. The tenant testified that she had been staying away from the property during the repairs by her choice.

Landlord Position

23. The landlords testified that there was a leak in the pipe in the laundry room. There were some indications from the landlords that they had knowledge of an issue in this area at least 1 year prior to this time frame and no correction was done then. The landlords testified that once they were notified on or about 04 August 2019 of the required repairs, the landlords began to address the issue and on 06 August 2019 asked the tenant to clean out the laundry room. A second request was made to the tenant on 11 August 2019 and shortly after that, the work began. The landlords testified that the tenant issued a termination notice on 23 August 2019 under Section 24 for the intended termination date of 28 August 2019. A copy of this notice was never submitted into evidence.
24. The landlords acknowledged that the tenant was inconvenienced as a result of the repairs but not to the extent she is claiming. The landlords challenged the photos stating that they were taken during the construction and the items were moved and the tenant had use of the property.

Analysis

25. I have reviewed the testimony and evidence of the tenant and landlords in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) was the tenant inconvenienced as a result of the repairs?
26. The landlords have acknowledged that the tenant would have been at least somewhat inconvenienced by the repairs as the laundry facilities were not available. The pictures clearly demonstrate this as well.
27. It is my opinion that the tenant has overstated the inconvenience in the property. I find that the property was indeed habitable, with the exception of the laundry facilities, and was quite usable with slight inconvenience. As a result of the inconvenience, I do find that the tenant is entitled to some level of compensation. However, this level does not reach a complete reimbursement of rent for the balance of the month. The tenant made a conscious decision to not stay in the unit. This decision does not constitute an automatic reimbursement.
28. In assessing the evidence I find that the testimony of the tenant was very evasive on facts and jumped all over the place in what I see was an attempt to confuse the situation. At best I find the tenant's testimony to be marginally credible.

29. Regarding the termination notice issued by the tenant, it is impossible to make a formal assessment on this document, as it was not submitted into evidence. However, based on the dates the tenant indicated that were the issue and termination dates, the notice is likely not valid as 5 clear days was not provided as required by the legislation.
30. Based on the totality of the evidence, I find that the tenant was marginally inconvenienced in this matter. The primary area of concern was the laundry room and facilities which is approximately 40 ft². The cost of inconvenience of the laundry facilities could have been determined by receipts from a laundromat, but none were provided. As such, I will make an arbitrary award based on the evidence. I find that \$100.00 is a reasonable level of compensation respecting lack of access to the laundry room and the inability to use the laundry facilities. The tenant's claim succeeds in the amount of \$100.00.

Decision

31. The tenant's claim for compensation for inconvenience succeeds in the amount of \$100.00.

Issue 3: Hearing Expenses

Tenant Position

32. 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

33. I have reviewed the testimony and evidence of the tenant and landlord in this matter. The expenses incurred by the tenant is 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 landlords are responsible to cover these reasonable expenses.

Decision

34. The landlords shall pay the reasonable expenses of the tenant in the amount of \$20.00.

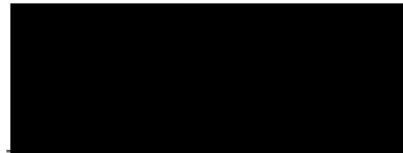
Summary of Decision

35. The tenant is entitled to the following:

- a) Refund of Security Deposit\$400.00
- b) Compensation for Inconvenience 100.00
- c) Damage to property20.70
- d) Hearing Expenses20.00
- e) **Total Owing to Tenant****\$540.70**

3 April 2020

Date



Michael Greene
Residential Tenancies Tribunal