

## Residential Tenancies Tribunal

Decision 19-0212-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 10.25 a.m. on May 22, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlords, [REDACTED] and [REDACTED], hereafter referred to as landlord1 and landlord2, respectively, participated in the hearing.
3. The tenant, [REDACTED], hereafter referred to as the tenant, participated in the hearing.

### Preliminary Matter:

4. The landlords amended the claim for the payment of utilities from \$200.00 to \$127.66.

### Issues before the Tribunal

5. The landlords are seeking the following:
  - a. Payment of payment of rent in the amount of \$850.00;
  - b. Payment of late fees in the amount of \$75.00;
  - c. Payment of utilities in the amount of \$127.66;
  - d. Hearing expenses.

6. The tenant is seeking the following:
  - a. Refund of the security deposit in the amount of \$425.00;

### **Legislation and Policy**

7. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
8. Also relevant and considered in this case are Sections 10, 14, 18, 19, and 23 of the Act and *Policy 12-1: Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

### **Issue 1: Payment of rent - \$850.00**

9. In determining an application for the payment of rent, the landlord is required to establish the rental rate and the payment record.

### Landlord Position

10. Landlord1 testified that the tenant moved into the unit on August 1, 2018 for an eight month term with rent set at \$850.00 per month due on the 1<sup>st</sup> of each month. On February 26, 2019 she spoke to the tenant about renewing her lease and the tenant was to let her know in a few days if she would be renewing the lease. On March 4, 2019 the tenant told her she would not be renewing the lease. Then on March 22, 2019 the tenant served a termination notice under section 23 of the Act that she would be vacating on March 31, 2019 (LL #4). They are disputing the termination notice and seeking rent in the amount of \$850.00 for the month of April 2019. Landlord1 said the noise the tenant is speaking off is just footsteps.
11. After the tenant presented her evidence, landlord1 testified that there are going to be some noise from the upstairs unit as they have two children; an 8 year old and a 13 year old. She said they try their best to be respectful of the people downstairs. They do not allow their kids to run across the floor. But one time her daughter was dancing in the kitchen. The tenant brought it to her attention. She apologized to the tenant and she told her daughter she wasn't allow to dance in the kitchen. She said as you can see by the videos presented by the tenant, there wasn't much noise.

12. Landlord1 further testified that they advertised the unit for rent on April 2, 2019 on three different online sites. They posted an ad on Facebook Market Place, [REDACTED], [REDACTED] and Surrounding Area Buy Swap/Buy/Give Away and she could not remember the other site. She said they have had a few inquiries and the unit was not re-rented as of the day of the hearing. The landlords submitted a copy of the ad posted on [REDACTED], [REDACTED] and Surrounding Area Swap/Buy/Give Away (LL #1).
13. Tenant2 testified that he has migraines and sound is the worst for migraines. When you hear a sound it sounds a lot worse when you have a migraine.

### Tenant Position

14. The tenant testified that she moved into the unit in August 2018. On November 3, 2019 she sent a message to the landlords concerning the noise from the upstairs unit. She said she told the landlords she is dealing with migraines and she has been very sick. She had to leave the unit because of the excessive noise. She is not sure if the noise was from banging doors or if it was footsteps. This was in the middle of the day. She said this noise continued all throughout December 2018. It would be from midday to around 8:00 p.m. She further testified that she sent another message on January 1, 2019 concerning the noise from upstairs. Then on February 4, 2019 she sent another text message that the noise is a bit much. The light in the ceiling was shaking. The tenant testified that she hears this noise every day. On February 12, 2019 she sent a video to the landlords concerning the noise. On March 1, 2019 landlord1 came to the unit to discuss renewing the lease and she asked the landlord to put a rug on the floor to buffer the noise but landlord1 refused. She said she told the landlord she has migraines and she is sick due to her pregnancy.
15. The tenant testified that on March 4, 2019 she sent a message to the landlords notifying them that she wanted a month to month tenancy and that she would be moving out. The landlord responded by saying they wanted a term agreement and they would be giving her a three month termination notice. Then on March 10, 2019 she notified the landlord that she found a place and she would be out on the 1<sup>st</sup> of April 2019. The landlord said that was not good enough. On March 15, 2019 she told the landlord she would be moving out on April 15, 2019 but the landlord told her the notice has to start on the 1<sup>st</sup> of the month. Then on March 17, 2019 she sent a text message to the landlords asking if they could have a talk as she was willing to sign a new lease. That evening there was a lot of noise and she sent a text message and a video of the noise to the landlords. She said she was rude in her message. On March 20, 2019 the landlords gave her a termination notice and on March 22, 2019 she sent a termination notice by a text message and she posted the notice on

the door stating she was leaving early because of the excessive noise. It was getting louder and louder. She said after she gave the termination notice there was an excessive amount of noise. There was banging on the floors, walls, and doors. It was aggressive to the point that she felt threatened in her unit. She contacted her mother and told her she has to leave because she was scared.

16. The tenant presented a USB containing videos that were taken on February 4 and 12, 2019 and on March 22, 2019 (T #1)

### **Analysis**

17. I have reviewed the testimony and evidence of the landlords and the tenant and I have determined that there are two issues that need to be addressed; (i) is the termination notice a valid notice; and (ii) are the landlords entitled to rent for the month of April. The tenant gave a termination notice under section 23 (interference with peaceful enjoyment) on March 22, 2019 to vacate on March 31, 2019 because of the noise from the upstairs unit. The tenant stated there was constant banging on the floors and doors banging and on a couple of occasions the light fixtures would vibrate. I find in the 3 videos presented by the tenant taken between February 4 and March 22, 2019 there is very little, if any, banging or noise coming from the upstairs unit. Therefore, the termination notice is not valid.
18. With regard to the payment of rent. If a tenant wants to vacate at the end of a rental term they are required to give a two month termination notice as required by section 18.(1)(c). When a rental agreement is not terminated in accordance with the Act, the landlords are required to mitigate their losses as per section 10.(1)4. I find the landlords tried to mitigate their losses as they advertised the unit within a reasonable period after they received the termination notice and the unit was not re-rented as of the date of the hearing. Thus, the landlords would be entitled to rent for the month of April 2019.

### **Decision**

19. The landlord's claim for rent succeeds in the amount of \$850.00 for the month of April 2019.

## **Issue 2: Late fees - \$75.00**

### Landlord Position

20. The landlords testified that they are seeking payment of late fees in the amount of \$75.00 as the tenant did not pay the rent for the month of April 2019.

### Tenant Position

21. The tenant testified that she is not responsible for the rent for the month of April 2019.

## **Analysis**

22. The rental arrears has been established in paragraph 19 above. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1<sup>st</sup> day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period. As the rent has not been paid for the month of April 2019 the late fees have exceeded the maximum amount of \$75.00.

## **Decision**

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

## **Issue 3: Compensation for payment of utilities - \$127.66**

### Landlord Position

24. The landlords testified that the tenant was responsible for the payment of utilities. They are seeking payment for the utilities for the month of April 2019 as the tenant had the power bill taken out of her name the end of March 2019. The cost of the power bill up to April 11, 2019 was \$37.98 and for the period April 11 – 30, 2019 is \$89.68 for a total of \$127.66. The landlord presented two Newfoundland Power bills (LL #2). The bill for April 11, 2019 is \$37.98 and the bill for May 13, 2019 is \$141.38.

### Tenant Position

25. The tenant testified that she was not living in the unit during the month of April.

## **Analysis**

26. I have reviewed the testimony and evidence of the landlord and tenant. I have determined there is one issue that needs to be addressed; (i) is the tenant responsible for the payment of utilities for the month of April 2019. As the tenant is liable for rent as per paragraph 19, the tenant would be responsible for the utilities for the month of April 2019 in the amount of \$37.98 up to April 11, 2019 and \$83.98 ( $\$141.38 \div 32 \text{ days} = \$4.42 \text{ per day} \times 19 \text{ days} = \$83.98$ ) for the period April 11 – April 30, 2019 for a total of \$121.96 ( $\$37.98 + \$83.98 = \$121.96$ ).

## **Decision**

27. The claim for compensation for the payment of the utilities succeeds in the amount of \$121.96.

## **Issue 4: Application for Security Deposit**

28. Under the authority of Section 47.(j) the director may authorize a landlord to offset money a tenant owes to the landlord against money the landlord owes to the tenant. Further under subsection (m), the director has the authority to determine the disposition of the security deposit.

### Landlord Position

29. The landlords testified a \$425.00 security deposit was paid on July 23, 2018.

### Tenant Position

30. The tenant testified that she paid a \$425.00 security deposit.

## **Analysis**

31. A security deposit was paid in July 2018. As the landlords have been successful in the claim for the payment of rent, late fees and utilities, they shall retain the \$425.00 security deposit.

## **Decision**

32. The landlords shall retain the \$425.00 security deposit as outlined in this decision and attached order.

**Issue 3: Hearing expenses**

33. Under the authority of Section 47.(q) the director may require the unsuccessful party to pay costs to the successful party to an application. Costs eligible to be awarded are identified in *Policy 12-1: Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF.*

Landlord Position

34. The landlords paid an application filing fee in the amount of \$20.00. They are seeking this cost.

**Analysis**

35. The cost the landlords incurred to file the application is considered a reasonable expense as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF.* As the landlords' claim has been successful, the tenant shall pay the landlords' hearing expenses in the amount of \$20.00.

**Decision**

36. The tenant shall pay the landlords' hearing expenses in the amount of \$20.00.

**Summary of Decision**

37. The landlord is entitled to the following:

a) Payment of rent .....	\$850.00
b) Late fees .....	\$75.00
c) Payment of utilities .....	\$121.98
d) Hearing expenses .....	\$20.00
e) <b>Less the security deposit .....</b>	<b>(\$425.00)</b>
f) <b>Total owing to the landlord.....</b>	<b>\$641.98</b>

October 1, 2019  
Date

  
Residential Tenancies Section