

Residential Tenancies Tribunal

Decision 19-363-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:05 pm on 23 May 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the landlord”, also participated.

Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$600.00.
4. The landlord is seeking an order for a payment of rent in the amount of \$750.00 and authorization to retain the security deposit.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case are sections 18 and 31 of the *Residential Tenancies Act, 2018*.

Issue 1: Rent - \$750.00

Relevant Submissions

The Landlord's Position

7. The landlord stated that she had entered into a monthly rental agreement with the tenant on 26 February 2019 and a copy of the executed agreement was submitted with her application (█ #1). The agreed rent was set at \$750.00 and the tenant paid a security deposit of \$600.00.

8. Part 8 of the rental agreement states:

Tenant agrees to give landlord a notice of at least 6 weeks' of termination of the rental agreement. A shorter notice period will result in applicable amount being deducted from the security deposit.

9. On 18 March 2019 the tenant sent a text-message (█ #2) to the landlord in which she writes: "Hi █, I am planning to be moved out by May 1st (6 week notice)" but on 23 March 2019 the tenant sent another text-message to the landlord stating: "And I don't think I have to move if you're ok with me staying!!". In response the landlord writes: "Yes – I'm ok with you staying. I haven't advertised yet."

10. On 12 April 2019 the tenant sent another text-message to the landlord again informing her that she will be moving at the end of April 2019. She writes: "Hey! I have another place paid rent for the month of May.... I don't know if I gave you six weeks notice, sorry about that!!". In response, the landlord states that, unless she can get the unit rented for 01 May 2019, she will have to charge the tenant rent for 24 days as the tenant had not given her the agreed 6 weeks' notice.

11. The landlord testified that she started advertising shortly after she received that text-message and she claimed that she had placed ads on Kijiji and NL Classifieds.

12. The landlord stated that she has new tenants lined up for 01 June 2019 and she allowed them to move some of their possessions into the apartment in May 2019. She testified that these new tenants paid her \$400.00 for May 2019 as they were storing some of their possessions there.

13. The landlord argued that as the tenant was required to give her 6 weeks' notice that she was terminating her rental agreement and as the notice was only given to her on 12 April 2019, she is entitled to rent for 24 days. She calculates that the tenant owes her \$576.00.

The Tenant's Position

14. The tenant claimed that she had given the landlord 6 weeks' notice that she was terminating her agreement when she sent the text-message on 18 March 2019. She acknowledged that it appeared that she had retracted that notice in the text-

message she had written on 23 March 2019 but she argued that what she had written was not definitive as she had used the phrase “I don’t think I have to move”.

15. Nevertheless, the tenant conceded that the landlord is probably entitled to some rent but she did not think she was entitled to the full amount she is seeking through her application.

Analysis

16. In typical month-to-month tenancies, the tenant is required to provide the landlord with at least 1 month’s notice that she is terminating her rental agreement. Section 18.(6) of the *Residential Tenancies Act, 2018*, however, does allow that a landlord and tenant “may agree in writing to a longer notice period” and the evidence submitted at the hearing establishes that there was an agreement in this tenancy that the notice period would be 6 weeks.
17. Although the initial notice of 18 March 2019 does meet the agreed timeframe requirement, the tenant withdrew that notice, with the consent of the landlord, just 5 days later. I do not accept the tenant’s argument that the words “I don’t think” have any bearing on her intention to withdraw the notice or on the fact that the landlord had, in fact, accepted her retraction.
18. The second text-message notice sent on 12 April 2019 clearly does not meet the agreed 6 weeks’ notice requirement. Furthermore, that notice also fails to abide by most of the other requirements set out in the *Residential Tenancies Act, 2018*—it is not in the prescribed form, it does not state the date the tenant will be vacating, it does not identify the residential premises, it does not identify the landlord or her address, etc.
19. As the tenant had not properly terminated her rental agreement, when she vacated the unit at the end of April 2019 she is considered to have abandoned the rented premises (cf. s. 31.(2) of the *Act*).
20. In cases where a tenant abandons rented premises, a landlord would typically be entitled to rent in lieu of proper notice if she suffers a loss of rental income and the landlord is right to point out that where it is agreed that the notice period is 6 weeks, she would be entitled to rent covering that period.
21. In the case at hand, the landlord stated that her new tenants paid her \$400.00 for the month of May 2019 and, therefore, the only loss she had suffered was the remaining \$350.00 she would have received had the tenant not abandoned the unit (\$750.00 per month less \$400.00 received from her new tenants).

Decision

22. The landlord’s claim for a payment of rent succeeds in the amount of \$350.00.

Issue 2: Security Deposit

23. The tenant paid a security deposit of \$600.00 on 20 February 2019 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim for lost rental income has succeeded, she shall retain \$350.00 of that deposit and refund the remaining amount to the tenant.

Summary of Decision

24. The tenant is entitled to the following:

- a) Refund of Security Deposit.....\$600.00
- b) LESS: Lost rental income..... (\$350.00)
- c) Total Owing to Tenant.....\$250.00

01 August 2019

Date



John R. Cook
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