

Residential Tenancies Tribunal

Decision 19-0563-05

John R. Cook
Adjudicator

Introduction

1. The hearing of application [REDACTED] was called at 1:20 pm on 26 August 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL. [REDACTED] was heard on 16 October 2019 at 11:20 am.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, were represented at the hearings by [REDACTED] (“[REDACTED]”). A letter of authorization is on file.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the landlords” were not present or represented at the hearing on 26 August 2019. They both participated in the 16 October 2019 hearing.

Issues before the Tribunal

4. The tenants are seeking an order for a refund of the security deposit in the amount of \$600.00.
5. The landlords are seeking an order for a payment of rent in the amount of \$850.00 and authorization to retain the security deposit.

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 14 of the *Residential Tenancies Act, 2018* and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

8. The landlords were not present at the hearing held on 26 August 2019. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. ■ submitted affidavits stating that the landlords were personally served with notice of the hearing on 15 August 2019 and they had 10 clear days to provide a response. As the landlords were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing of application ■ in their absence.

Issue 1: Refund of Security Deposit - \$600.00

Relevant Submissions

The Tenants' Position

9. The landlords and tenants entered into a 1-year, fixed-term lease, commencing 01 September 2018 and the landlords' submitted a copy of that agreement at the hearing (■ #1). The agreed monthly rent was set at \$850.00 and it is acknowledged in the lease that the tenants had paid a security deposit of \$600.00. A copy of the receipt for the security deposit was also submitted at the hearing (■ #1).
10. ■ stated that the rental unit is in an older home and no renovations had been carried out since it was constructed in the 1960s. She stated that the landlords had promised the tenants that they would be carrying out renovations after they moved in, but in April 2019, when ■ asked the landlords about those renovations, she was informed that nothing would be done to their apartment during the duration of the lease.
11. ■ testified that she had concerns about the health and safety of the tenants in the rented apartment and given that no renovations would be carried out to allay those concerns, she informed the landlords that the tenants would be moving out at the end of May 2019.
12. ■ stated that the landlords have not returned the security deposit to the tenants and she stated that the tenants had not entered into any written agreement on the disposition of the deposit.
13. ■ is seeking an order for a return of the full amount of that deposit.

Analysis

14. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

Security deposit

14. (8) *A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.*

(9) *Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.*

(10) *Where a landlord believes he or she has a claim for all or part of the security deposit,*

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

(11) *Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).*

(12) *A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.*

(13) *Where a landlord does not make an application under paragraph (10)(b) or return the security deposit in accordance with subsection (12), the director may, without conducting a hearing, make an order requiring the landlord to return the security deposit to the tenant.*

(14) *Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.*

15. It is not disputed that the tenants had paid a security deposit of \$600.00 and that it has not been returned to them. It is also not disputed that the landlords and tenants had not entered into any written agreement on the disposition of that deposit.

16. Although the landlords had made an application to the Director (██████████), that application was not filed until 27 August 2019, 11 days after they had been served with the tenants' application.
17. As such, the landlords are required, as per subsection 14.(12), to refund the full amount of the security deposit to the tenants.

Decision

18. The tenants' claim for refund of the security deposit succeeds in the amount of \$600.00.

Issue 2: Rent – \$850.00

Relevant Submissions

The Landlords' Position

19. The landlords pointed out that the lease they had signed with the tenants was not set to expire until 31 August 2019 and when the tenants moved there were still 3 months left run.
20. The landlords stated that they started advertising the unit for rent in mid-May 2019 and they were able to find new tenants for 01 July 2019. In support of that claim, the landlords submitted into evidence copies of the advertisements that they had posted online (██████████ #2).
21. The landlords pointed out that even though they were able to secure new tenants for July 2019, the unit was vacant during June 2019 and they suffered a loss of rental income for that month.
22. The landlords argued that as the tenants moved out before the lease expired and as they had not issued them a proper termination notice, the tenants are therefore responsible for the loss of income for June 2019.

The Tenants' Position

23. ██████████ acknowledged that she had not issued the landlord a written notice and she claimed that had she known that that was a requirement, she would have done so.
24. In any case, as indicated in section 1, above, ██████████ stated that she terminated the tenancy because of health and safety issues in the apartment and because the landlords stated that they were not prepared to carry out any renovations.

25. ■ claimed that all the windows in the apartment were nailed shut and there was only one exit out of the unit. She also complained that it was cold in the apartment and insects would get in. Additionally, she stated that the conditions in the apartment were exacerbating her daughter's breathing problems.

Analysis

26. The landlords are right to point out that, under normal circumstances, as the tenants had entered into a fixed-term lease, they were committed to the full term of the lease and if they wished to terminate their agreement with the landlords, they could not specify a termination date which is earlier than the expiration date set out in the lease—31 August 2019.
27. In some cases, though, a lease can be broken and the *Residential Tenancies Act, 2018* does contemplate cases where tenants can justifiably specify a termination date that is earlier than that set out in the lease. For example, if a rental unit becomes uninhabitable prior to the expiration date of the lease, a tenant can issue a termination notice under section 21 of the *Act* (notice where premises uninhabitable) that has immediate effect.
28. However, even if there are grounds for issuing a notice under section 21, or some other section of the *Act* whereby a tenant can get out of a lease early, such notices must be in compliance with section 34 of the *Act*, which states:

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.*
29. ■ acknowledged that she had not issued a written notice to the landlords and therefore her verbal notices to them are not in compliance with the *Act*.
30. Where tenants vacate residential premises without terminating the agreement in accordance with the *Residential Tenancies Act, 2018* they are considered to have abandoned the rented premises (cf. s. 31.(2) of the *Act*) and they are liable for any damages suffered by the landlords, including a loss of rental income, as a result of that abandonment. That liability is only tempered by the landlords' duty to mitigate those damages.

31. I accept the landlord's claim that they had mitigated their damages by advertising the unit for rent for 01 June 2019 and I also accept their claim that they were only able to secure tenants for 01 July 2019.
32. For these reasons, the landlords' claim succeeds.


Decision

33. The landlords' claim for compensation for lost rental income succeeds in the amount of \$850.00.

Summary of Decision

34. The landlords are entitled to the following:
- a) Rent\$850.00
 - b) LESS: Refund Security Deposit (\$600.00)
 - c) Total Owing to Landlords\$250.00

14 January 2020
Date


John R. Cook
Residential Tenancies Tribunal