

Residential Tenancies Tribunal

Decision 19-0786-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:05 am on 04 February 2020 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. He was represented by [REDACTED] (“[REDACTED]”). 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 \$300.00.
4. The landlord is seeking an order for a payment of rent in the amount of \$560.00, hearing expenses in the amount of \$20.00 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 is sections 14 and 24 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

7. The tenant called the following witness:
 - [REDACTED] (“[REDACTED]”) – social worker with Connections for Seniors

Issue 1: Rent - \$560.00

Relevant Submissions

The Landlord’s Position

8. The landlord stated that he had entered into a monthly rental agreement with the tenant on 01 August 2019 and a copy of the executed agreement was submitted with the tenant’s application ([REDACTED] #1). The agreed rent was set at \$560.00 and it is acknowledged in the rental agreement that the tenant had paid a security deposit of \$300.00.
9. The landlord testified that the tenant had been causing disturbances at the rental unit and on 13 September 2019 he issued him a termination notice. No copy of that notice was issued at the hearing, but the landlord claimed it was a 5-day notice and was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy). It had an effective termination date of 19 September 2019.
10. The landlord stated that the tenant did not vacate as required and on 26 September 2019 the tenant sent the landlord an e-mail stating that he would move by 02 October 2019 ([REDACTED] #1). The landlord testified that he had explained to the tenant that this notice was not proper and that if he was terminating his tenancy, he would have to give a termination date that fell on the last day of the month.
11. On the following day, the tenant sent another termination notice to the landlord ([REDACTED] #2). This notice had an effective termination date of 30 September 2019.
12. The landlord complained, however, that the tenant did not vacate until 02 October 2019 and he only received the keys from the tenant on that date.
13. The landlord stated that because he did not have keys to the unit he was unable to show the room to prospective tenants and he suffered a loss of rental income during the month of October 2019. He is seeking a payment of \$560.00 in compensation for that loss.
14. The landlord testified that he had been advertising that room on Kijiji. He could not recall when he had placed those advertisements and no copies of those advertisements were presented at the hearing.

The Tenant's Position

15. ■ stated that the tenant had received a termination from the landlord sometime in September 2019, but she claimed that in a conversation with the landlord, he had advised her that the tenant could stay to the end of the month so long as he had something in writing from the tenant indicating that he would be moving.
16. ■ claimed that after the tenant had sent the first notice to the landlord, indicating he would move by 02 October 2019, he informed the tenant that he would have to move before the end of the month and he again requested that he be provided with written proof that he would be moving out. That was when the tenant had issued the second notice, indicating that he would vacate by 30 September 2019.
17. ■ stated that the tenant did vacate by 30 September 2019 and she claimed that the only reason the keys were not returned until 02 October 2019 was because this was the earliest date and time the landlord was available to meet. The tenant's witness, ■, corroborated that claim.
18. When ■ visited with the landlord on 02 October 2019, he stated that there were several reasons why he would not be returning the security deposit to the tenant. The landlord informed ■ that the tenant had been disruptive and he also claimed that he had caused damages to his room. He also informed ■ that the tenant had not given him a 30-day notice that he was vacating and he complained that he should have been given the keys prior to 02 October 2019.
19. ■ stated that the tenant is on social assistance and his rent and security deposit is paid on his behalf by the Department of Advanced Education, Skills and Labour (AESL). She complained that because the landlord had not returned the security deposit to him he has had to make an emergency request for a second deposit for his new rental unit and his monthly benefit payments have been reduced as a result, causing him financial hardship.

Analysis

20. I accept the tenant's corroborated testimony and I find that he had vacated the rental unit on 30 September 2019. I also find that, according to his corroborated testimony, the landlord wanted him to vacate at end of September 2019 and that the landlord had requested that he provide to him a written notice that he would vacate on that date.
21. As the tenant had moved out at the end of the month as agreed, and as the tenant did not have use and enjoyment of the property after that date, I find that the tenant is not responsible for rent for October 2019.

Decision

22. The landlord's claim for a payment of rent does not succeed.


Issue 2: Security Deposit

23. The tenant paid a security deposit of \$300.00 on 01 August 2019 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim for rent had not succeeded, he shall return the full amount of that deposit to the tenant.

24. The tenant's claim for refund of the security deposit succeeds in the amount of \$300.00.

05 May 2020

Date



John R. Cook
Residential Tenancies Tribunal