

Residential Tenancies Tribunal

Decision 19-0855-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:20 a.m. on December 4, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the landlord, participated in the hearing through a conference call. The respondent, [REDACTED], hereafter referred to as landlord 1, did not attend the hearing but she was represented by [REDACTED].

Preliminary Matter

4. Prior to the start of the hearing I called the respondents. I was unable to reach them. We were 10 minutes into the hearing and the landlord called. The landlord participated in the remainder of the hearing.
5. The landlord testified that he did not receive the notice of the hearing. The affidavit of service submitted by the tenant shows that the notice of this hearing was sent electronically to the landlords on November 18, 2019. The tenant provided a copy of the e-mails along with the lease agreement. The lease agreement contains the landlords' e-mail address. As the landlords were properly served with the application for dispute resolution, I proceeded with the hearing.

Issues before the Tribunal

6. The tenant is seeking the following:
 - a. Return of the security deposit in the amount of \$475.00;
 - b. Return of rent in the amount of \$337.15;
 - c. Compensation for inconveniences in the amount of \$332.22;
 - d. Hearing expenses.

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 14 and 23 of the Act and *Policy 12-1: Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Return of the security deposit - \$475.00

Tenant Position

9. The tenant testified that she moved into the unit on September 13, 2019 on a month to month tenancy with rent set at \$950.00 per month due on the 1st of each month. The rent was to start on October 1, 2019. On September 12, 2019 she paid a \$475.00 security deposit. She gave a termination notice on October 15, 2019 to vacate on October 21, 2019. She vacated on October 17, 2019. To the date of the hearing the landlords have not returned her security deposit.
10. The tenant submitted into evidence a copy of the interac e-transfer (T #3) dated September 12, 2019 in the amount of \$1425.00. It states \$950.00 for October's rent and \$475.00 damage deposit.

Analysis

11. I have reviewed the testimony and evidence of the tenant. I have determined that there is one issue that needs to be addressed; did the tenant pay a security deposit in the amount of \$475.00. Based on the copy of the interac e-transfer presented, I find a security deposit in the amount of \$475.00 was paid on September 12, 2019. Further, the landlords have not filed an application to keep the security deposit as per section 14.(11). Under section 14.(12)

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

tenant.

Decision

12. The landlords shall return the \$475.00 security deposit to the tenant.

Issue 2: Return of rent - \$337.15

Tenant Position

13. The tenant testified that she gave a termination notice under section 23 (interference with peaceful enjoyment) to the landlords by e-mail on October 15, 2019 to vacate on October 21, 2019. She vacated on October 17, 2019. She is seeking return of rent for the period October 22 – 31, 2019 in the amount of \$337.15. The reason she gave the notice was that the upstairs tenants were noisy all of the time, day and night. They were loud and they would be running across the floor. It was not a regular walk. They were stomping. The floors were squeaky. There would be someone coming and going all hours of the night. On a few occasions the dryer would be on at 2:00 a.m. She also testified that the bathroom was above her bedroom and she could hear them showering all hours of the night. She said that her son has a medical problem and he could not get his proper sleep.
14. The tenant testified that she recorded the noise from the upstairs on different occasions. The following are some of the dates and times she recorded; on September 22, 2019 at 1:23 a.m. the upstairs tenants were being loud and the floors were squeaking; on October 5, 2019 around 11:00 p.m. and October 8, 2019 at 11:10 p.m. there was noise and the floors were squeaking. The dryer was running at 11:00 p.m. on October 9, 2019. On October 13, 2019 there were extra people upstairs. They were noisy and she recorded the noise around 11:50 p.m. This continued until after 1:00 a.m. on the morning of October 14, 2019.
15. The tenant submitted a USB containing the audios (T #8).

Landlord Position

16. The landlord testified that when the tenant brought the issues to his attention, he spoke with the upstairs tenants. They told him that they had company one evening and they felt they had not been outside of the normal noise level. They also told him that they were not doing the laundry late at night.

17. The landlord testified that a new tenant moved into the unit around November 1, 2019. Since she has moved in, she does not have any issues with the upstairs tenants.

Analysis

18. I have reviewed the testimony and the evidence of the tenant and the landlord. I have determined that there is one issue that needs to be addressed; is the tenant entitled to return of rent. Under section 23 of Act, the tenant can terminate a tenancy if the landlord contravenes statutory condition 7.(1) by interfering with the tenant's peaceful enjoyment. After reviewing the audios presented I find you have to listen very closely to hear anything. Sometimes you might hear a low voice or footsteps in the background. There is no stomping. Based on these audios, I find that the tenant did not have grounds to terminate the tenancy under section 23 of the Act. Therefore, the tenant's claim for return of rent fails.

Decision

19. The tenant's claim for return of rent fails.

Issue 3: Compensation for Inconveniences - \$272.22

Tenant Position

20. The tenant testified that she incurred costs to move as she did not have peaceful enjoyment of the unit. She paid \$96.20 to change her address; \$68.94 to have the internet activated at her new unit; \$57.08 to purchases boxes and \$50.00 for gas for her vehicle. She had to make 7 trips to move her belongings.
21. The tenant submitted into evidence an invoice for \$96.20 to have the mail forwarded (T #4); an invoice for \$59.95 for internet services (T #5); an invoice from U-Haul Sales in the amount of \$57.08 (T #6); and a receipt from Circle K/Irving dated October 17, 2019 in the amount of \$50.00 for the purchase of gas (T #7).

Landlord Position

22. The landlord testified that he spoke with the upstairs tenants and they said that they have not been outside the normal noise level. Also, since the new tenants have moved into the unit, he has not received any complaints about noise from the upstairs unit.

Analysis

23. I have reviewed the testimony and the evidence of the tenant and landlord. I have determined that there is one issue that needs to be addressed; is the tenant entitled to compensation for inconvenience. I find that the costs the tenant incurred were moving expenses. As the tenant did not have grounds to terminate the tenancy under section 23 of Act as outlined in No. 18 above, the claim for compensation for inconveniences fails.

Decision

24. The tenant's claim for compensation for inconveniences fails.

Issue 4: Hearing Expenses

25. 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*.

Tenant Position

26. The tenant paid \$20.00 to file the application for dispute resolution. The tenant is seeking this cost.

Analysis

27. The cost the tenant 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*. Even though the tenant's claim has been successful in return of the security deposit, no fee was required to file this type of application. As the tenant's claim for return of rent and compensation for inconveniences has been unsuccessful, the claim for hearing expenses fails.

Decision


28. The tenant's claim for hearing expenses fails.

Summary of Decision

29. The tenant is entitled to the following:

a) Return of the security deposit.....\$475.00

May 5, 2020
Date


Residential Tenancies Section