

Residential Tenancies Tribunal

Decision 19-0922-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:00 pm on 17 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 landlord”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, also participated.

Issues before the Tribunal

3. The landlord is seeking the following
 - A determination of the validity of a termination notice issued to her on 29 November 2019,
 - An order for a payment of rent in the amount of \$420.00,
 - An order for a payment of late fees in the amount of \$75.00,
 - An order for a payment of utilities in the amount of \$110.23, and
 - An order for a payment of hearing expenses in the amount of \$24.69.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 10 and 23 of the *Residential Tenancies Act, 2018* and section 25 of the *Residential Tenancies Act, 2018*.

Issue 1: Validity of Notice

Issue 2: Rent - \$420.00

Relevant Submissions

The Tenant's Position

6. The landlord and tenant entered into a monthly rental agreement, commencing 01 September 2019. The tenant moved in on 12 September 2019. The tenant was renting 1 of 6 rooms in the premises and the landlord resided in one of the rooms herself.
7. The agreed rent was set at \$420.00 per month and the tenant had paid a security deposit of \$200.00 on 04 July 2019.
8. The tenant complained about several problems that had arisen during his tenancy and which the landlord had not adequately addressed.
9. He stated that when he first moved into his room, he had requested that he be provided with a key to his room. He testified that the landlord had refused that request and told him that if he wanted a key to his room he would have to change the locks himself, at his own cost.
10. He also complained that there was mold all throughout the house, and on the walls and windows in his room. In support of that claim he played a video showing mold all along the 4 edges of a wall. He stated that he complained to the landlord about that matter but she did nothing to rectify the issue. He complained that the mold had been making him sick and he had developed a cough because of that mold.
11. The tenant also stated that when he visited the unit in July 2019, he was not informed that it would be put up for sale anytime soon. But when he arrived at the property in September 2019, he found that a For Sale sign had been erected. He testified that sometime in November 2019, 2 people entered his unit, without any notice, to view the property and they began inspecting the common areas of the property. He also testified that they then entered all the bedrooms in the house, including his. The tenant claimed that this entry was in violation of the *Residential Tenancies Act, 2018* and an invasion of his privacy.
12. Finally, the tenant complained that at the end of November 2019, the landlord informed him that she was moving out on 22 December 2019. She also stated that she would be selling off her furniture, which, the tenant stated, comprised about 95% of the furniture in the house. Additionally, the tenant claimed that the landlord had informed him that, although he was currently in a month-to-month tenancy, if he wished to continue to reside at the unit, he would be required to sign a fixed-term lease with the new landlords.

13. Because of these issues, the tenant decided to terminate his rental agreement and he issued the landlord a termination notice on 29 November 2019. That notice was issued under section 23 of the *Residential Tenancies Act, 2018* (notice where landlord contravenes peaceful enjoyment and reasonable privacy), and it had an effective termination date of 04 December 2019. The tenant stated that he vacated on 30 November 2019.

The Landlord's Position

14. The landlord argued that she had not interfered with the tenant's peaceful enjoyment and she contested the validity of the termination notice she had been issued.
15. Regarding the mould, the landlord claimed that she was only notified once about that matter and she argued that the tenant was negligent in not reporting that matter to her earlier. She stated that when she was notified of the matter, she contacted the new owners of the house and she was provided with a dehumidifier which helped tackle that problem.
16. With respect to the breach of privacy that the tenant had complained about, the landlord stated that there were several viewings at the unit since September 2019 and she claimed that before each visit she had sent all the tenants a notice via Facebook messenger.
17. The landlord acknowledged that she had informed the tenant that she was moving out on 22 December 2019 and that she was going to sell her furniture, but she claimed that if any of her tenants had voiced any concerns to her about the furniture, she was willingly to work with them and would have delayed her move-out date to 31 December 2019.
18. The landlord argued that she was entitled to a full, 1-month notice that the tenant was terminating his agreement with her. She stated that on 29 November 2019, the earliest date that the tenant could have indicated that their agreement was ending was 31 December 2019.
19. Given that the tenant could not terminate his agreement prior to 31 December 2019, the landlord argued that the tenant ought to have paid to his rent to her for that month. The landlord stated that because the tenant had moved out without proper notice she suffered a loss of rental income for December 2019. She is seeking an order for a payment of rent in the amount of \$420.00 and she has also assessed late fee in the amount of \$75.00.
20. The landlord testified that after the tenant had sent her the termination notice, she immediately began advertising the unit for rent, but she was unable to secure a new tenant for December 2019. No copies of that advertisement was submitted at the hearing.

Analysis

21. I found the testimony of the tenant to be believable and credible and the majority of his testimony was not disputed by the landlord. The tenant's evidence does show that there was a mold problem in his bedroom and in that respect I find that the landlord was in violation of statutory condition 1 as set out in section 10 of the *Residential Tenancies Act, 2018*, which states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

1. Obligation of the Landlord -

(a) The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.

(b) Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.

22. Regarding the viewing that took place in mid-November 2019, I accept the tenant's claim that he had received no notice that anyone would be entering the premises at that time and the landlord presented no evidence to the Board to corroborate her claim that she had given the tenant any notice of that viewing. I find, then, that the landlord was also in contravention of statutory 5, which states:

5. Entry of Residential Premises - Except in the case of an emergency, the landlord shall not enter the residential premises without the consent of the tenant unless

(a) notice of termination of the rental agreement has been given and the entry is at a reasonable time for the purpose of showing the residential premises to a prospective tenant or purchaser and a reasonable effort has been made to give the tenant at least 4 hours' notice;

(b) the entry is made at a reasonable time and written notice of the time of the entry has been given to the tenant at least 24 hours in advance of the entry; or

(c) the tenant has abandoned the residential premises under section 31.

23. There was also no dispute that that landlord had informed the tenant that she was moving out on 22 December 2019 and that she had intended to sell her furniture before she vacated. I find that these issues, taken cumulatively, would have greatly interfered with the tenant's use and enjoyment of the residential premises and I find that he was in a position to issue the landlord a termination notice under section 23 of the *Act*, which states:

Notice where landlord contravenes peaceful enjoyment and reasonable privacy

23. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 7(b) set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises on a specified date not less than 5 days, but not more than 14 days, after the notice has been served.

(2) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the tenant;

(b) state the date on which the rental agreement terminates and the tenant intends to vacate the residential premises; and

(c) be served in accordance with section 35.

24. As such, I find that the landlord's claim for rent for the full month of December 2019 does not succeed. But as the tenant had set a termination date of 04 December 2019, I find that he is responsible for rent for the first 4 days of that month.

25. I calculate that amount to be \$54.19 ($\420.00 for December 2019 \div 31 days \times 4 days).

Decision

26. The landlord's claim for a payment of rent for December 2018 succeeds in the amount of \$54.19.

Issue 3: Late Fees - \$75.00

Relevant Submissions

27. The landlord has assessed late fees in the amount of \$75.00.

Analysis

28. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

29. The minister has prescribed the following fees:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

30. As the tenant has been in arrears since 02 December 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

31. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 4: Utilities - \$110.23

Relevant Submissions

The Landlord's Position

32. The landlord stated that the tenant was responsible for paying 1/6th of the electrical and internet bills. She stated that the tenant had not paid his portion of these utility bills for November 2019 and she submitted copies of these bills with her application.

33. The landlord calculates that the tenant owes her \$110.23.

The Tenant's Position

34. The tenant complained that the landlord had not provided him with any utility bills during his tenancy. He claimed that she would merely inform him each month that he owed a certain amount to her.
35. The tenant did not contest the landlord's contention that he owed 1/6th of the amount of the bills submitted at the hearing.

Analysis

36. As the tenant did not contest this portion of the landlord's claim, I find that he owes her \$91.18 (\$51.56 for the electricity (\$309.36 ÷ 6) and \$39.62 for the internet (\$237.70 ÷ 6)).

Decision

37. The landlord's claim for a payment of utilities succeeds in the amount of \$91.18.

Issue 5: Security Deposit

38. The tenant paid a security deposit of \$200.00 on 04 July 2019. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order

Issue 6: Hearing Expenses

Relevant Submissions

39. The landlord submitted a hearing expense claim form with her application as well as a receipt for \$20.00 for filing the claim, a receipt for \$4.69 for the costs of printing and a receipt showing that she had paid \$40.00 to have 2 affidavits notarized. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

Decision

40. The landlord's claim for hearing expenses succeeds in the amount of \$64.69

Summary of Decision


41. The landlord is entitled to the following:

a) Rent	\$54.19
b) Late Fees	\$75.00

- c) Utilities\$91.18
- d) Hearing Expenses.....\$64.69
- e) LESS: Security Deposit..... (\$200.00)
- f) Total Owing to Landlord.....\$85.06

15 May 2020

Date


John R. Cook
Residential Tenancies Tribunal