

Residential Tenancies Tribunal

Decision 19-0927-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:10 am on 12 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. 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 rent in the amount of \$740.00 and an order for a payment of “other expenses” in the amount of \$80.50.

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 is section 20 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The tenant amended his application and removed his claim for “other expenses”.

Issue 1: Refund of Rent - \$740.00

Relevant Submissions

The Tenant's Position

7. The tenant stated that he had entered into a 1-year, fixed-term rental agreement with the landlord on 24 August 2019 and a copy of the executed lease was submitted with the tenant's application (█ #1). The rental unit was a room in a 3-room apartment and the tenant shared the common areas with 2 other tenants-in-common.
8. The agreed rent was set at \$500.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$375.00.
9. On 06 November 2019 the tenant issued the landlord a termination notice and a copy of that notice was also submitted with his application (█ #2). This notice was issued under section 20 of the *Residential Tenancies Act, 2018* (notice where material term of agreement contravened) and it had an effective termination date of 01 January 2020.
10. The tenant vacated the unit on 31 December 2019 and the landlord returned the security deposit to the tenant at that time.
11. The tenant submitted a copy of a text-message exchange (█ #3) he had with the landlord's wife, █, through the month of August 2019, when he was contemplating renting a room at the premises. Reference is made in that exchange of a photograph of one of the rooms at the property and on 09 August 2019 the tenant tells █ that he'll "take the upstairs room shown in the picture". In response, █ tells the tenant to contact the landlord and she provides him an e-mail address.
12. The tenant contacted █ 2 times after that exchange, once 09 August 2019 and again on 13 August 2019, informing her that the landlord had not replied to his e-mail. █ replied on 13 August 2019 that there was now only 1 room available upstairs to rent and says that she can send him the lease agreement for that room. The tenant responded: "sure but I wanted the room shown in the picture but not sure I'll get that one 😊 😊". KJ responded: "All rooms upstairs are very similar".
13. The landlord contacted the tenant after that exchange and a lease was signed and a security deposit was paid.
14. The tenant stated that in late September 2019 he discovered that his room was smaller than the one shown in the photograph and the one that he had agreed to rent. He stated that he had measured his room and reported that it was 2.97m x 2.8m. He measured the room he had agreed to rent from the outside, and he

said that, although he cannot be exact, that room measures 4.37m x 3.12m, a difference of 37%.

15. The tenant then contacted the landlord about this issue on 26 September 2019 and a copy of that e-mail was presented at the hearing (AP #5). In that e-mail, the tenant requests that the landlord measure the rooms. He stated that if his room is indeed 1/3rd the size the one he wanted, he should not have to pay same amount of rent. He also states that, if after being measured his room is only slightly smaller, he would have no problem paying the agreed \$500.00 in rent. The tenant complained that the landlord refused to measure the rooms.
16. The tenant argued that as the room that he had moved into was 37% smaller than the one that he had agreed to rent, he should not have to pay the same amount of rent. He is seeking a rebate of 37% of the rent that he had paid for each month that he resided at the rental unit: \$740.00 (\$500.00 per month x 37% x 4 months).

The Landlord's Position

17. The landlord stated that he had not breached their rental agreement and he claimed that he had already agreed to let the tenant out of his lease several weeks before he had issued him the submitted termination notice.
18. He stated that when the tenant had e-mailed him on 26 September 2019, he had offered him the opportunity to move into a larger room when one becomes available and he also offered him the opportunity to move out on 31 December 2019 if he wished to break the lease. He stated that the tenant had availed of that second option.
19. Regarding the rebate of rent, the landlord responded with 3 arguments.
20. Firstly, he claimed that there was no commitment that the tenant would be assigned any particular room in the premises. He pointed out that although the tenant had indicated to ■■■ that he would take the room shown in the photograph, she did not make any commitment and had not agreed that he could have that particular room, but rather told him to contact the landlord.
21. The landlord also pointed out that there is no indication in the lease which room the tenant would be given and the rooms have no identifying designation. He testified that the rooms are picked by the tenants after they sign a lease and pay a security deposit, and he pointed out that the tenant's roommates signed their leases first.
22. The landlord further pointed out that all of the rooms in the premises were being rented at \$500.00 per month and he did not discriminate based on room size.
23. Secondly, the landlord pointed out that the tenant had been looking for a reduction in rent since he had first reached out to ■■■. He pointed out that he had

requested that the rent be reduced from \$500.00 to \$450.00 on 5 separate occasions in August 2019. He surmised that the issue with room size may be just another way for the tenant to get the rent reduction he is seeking.

24. Finally, the landlord stated that the tenant had not measured the rooms correctly. He submitted an MLS listing for the property which details the room sizes and he pointed out that the tenant's room is only 18% smaller than the largest room, not 37%.
25. He also pointed out, though, that the tenant was not just renting a room. \$150.00 of the money he had paid to the landlord was for utilities and the other \$350.00 was for use and occupation. But that \$350.00 not only included the use of the bedroom, it is also included the use of the bathroom, the dining room, living room and kitchen. When those areas of the house are taken into account, it turns out that the tenant only had 2.33% less living space than the person occupying the largest room.
26. The landlord argued that if the Board does find in favour of the tenant, he should only be awarded \$32.62, not \$740.00 (\$350.00 per month x 4 months x 2.33%).

Analysis

27. I agree with the landlord's first argument and I find that the tenant has no claim for a rebate of rent.
28. On review of the submitted text-messages, I agree with the landlord that ■ does not promise the tenant that he can have the room shown in the photograph and there is nothing in the lease stating that the tenant has been assigned to a particular room.
29. The tenant's evidence only shows that he wanted a particular room, not that the landlord had given him any assurances that he could have it. His text-message exchange with ■ also seems to indicate that on 13 August 2019 the tenant is resigned to the fact that he will not get the room he initially wanted. He nevertheless went ahead and signed the lease.
30. But was ■ or the landlord being deceitful or not-wholly-forthcoming when they indicated that the 3 rooms were "similar"? I'll make 2 points regarding that question.
31. First, there is the dictum: let the buyer beware (*caveat emptor*). It is the tenant's responsibility to inspect the premises prior to agreeing to rent it to see if it suits his needs. The tenant did not visit the unit for a walkthrough before signing the lease and in none of the text-message or e-mail exchanges submitted at the hearing does the tenant make any inquiry about the size of the 3 rooms.
32. Secondly, the landlord's evidence does show that the tenant's room was only 18% smaller than the largest room, not 37%. But size is only one factor in

determining whether 2 things are similar. He also submitted photographs at the hearing showing these 3 rooms. In each room there is a window and the rooms are each furnished with a dresser, a night table, a bed, a desk and a chair. I can't tell from these photographs which room is the larger one and which is the smaller. All things considered—the size of the room being just one—I conclude that these rooms are very similar.

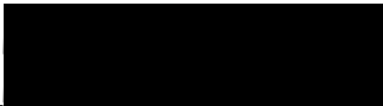
33. I also pointed out to the tenant at the hearing that landlords in this province can charge whatever rate of rent they choose for their rental properties and this Board does not regulate rent based on square footage.

Decision

34. The tenant's claim for a rebate of rent does not succeed.

11 May 2020

Date



John R. Cook
Residential Tenancies Tribunal