

## Residential Tenancies Tribunal

Decision 20-0035-03

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at **9:30 am** on **30 November 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via Bell Teleconferencing System.
2. The applicant, [REDACTED] ([REDACTED]), hereafter referred to as the landlord, participated in the hearing. (*Affirmed*).
3. The respondent, [REDACTED] ([REDACTED]), referred to as the tenant, participated in the hearing. (*Affirmed*).
4. The details of the claim were presented as a written monthly agreement with rent set at \$700.00 per month and due on the 1<sup>st</sup> of each month. The agreement was due to expire on 31 January 2021. A security deposit in the amount of \$525.00 was collected on or about 15 January 2020.
5. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

### Preliminary Matters

6. The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **11 August 2020** by serving the original documents to the tenant at the email: [REDACTED]. A copy of the email was attached.

The service was not clear if the documents were attached to the email. The tenant acknowledged receiving the documents and was ok to proceed with the hearing on the 08 October 2020 sitting of this file.

There were several re-scheduling's of this file and were served by the Residential Tenancies Office.

7. The landlord has claimed hearing expenses under the "OTHER" category and has indicated at the hearing that he did not wish to seek any hearing expenses. As such, the \$20.00 for the filing fee will be removed from the claim under OTHER. The new total is \$422.31.
8. The landlord is further claiming \$414.32 for the travel between [REDACTED] and [REDACTED] to inspect and post notices. These expenses are not directly related to the claim process but are a part of the normal duties of a landlord during the course of a tenancy. As such, these are not considered claimable expenses but a normal cost of doing business for a landlord who decides to live out of the area of the rental property. These costs will be removed from the claim. The new total of OTHER is \$7.99.

### Issues before the Tribunal

9. The landlord is seeking the following:
  - a) Payment of rent owing **\$203.23**;
  - b) Payment of Utilities **\$50.95**;
  - c) Damages **\$103.17**;
  - d) Other **\$422.31**;
  - e) Hearing expenses.

### Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. Also relevant and considered in this case are:
  - a. Sections 19, 34 and 35 of *the Act*, and;
  - b. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*, and;
  - c. Policy 9-3: *Claims for Damages to Rental Premises*, and;
  - d. Policy 9-5: *Life Expectancy of Property*.

## Issue 1: Validity of Notice

### Relevant Submissions

#### Landlord Position

12. The landlord is seeking the determination of the validity of a termination notice issue by the tenant under section 23 of the *Residential Tenancies Act, 2018*.
13. The landlord testified that the tenant has not provided any evidence to suggest that the landlord interfered with the peaceful enjoyment and reasonable privacy of the tenant under section 23.
  - a. Landlord Rebuttal:
14. The landlord addressed the tenant's concerns at the hearing on mold. He stated that he was notified on a Saturday and as on Monday morning, there was a worker at the property addressing the issue. He stated that the alleged mold was cleaned up and remediated.

#### Tenant Position

15. The tenant testified that she found mold in the bathroom of her unit and feels that this is a health concern. The tenant supplied some photos of the base of the toilet and a photo of the vinyl pulled back from the tub (**Exhibit T # 3**). The tenant's complaint referenced only the toilet issue.
16. The tenant testified that when she notified the landlord of the mold issue, it was not addressed in a reasonable time frame and therefore she had no choice but to terminate. The tenant supplied a series of messages between the landlord and tenant (**Exhibit T # 2**) and claims that the landlord did not address her in a professional manner.

### Analysis

17. I have reviewed the testimony and evidence of the landlord and tenant in this matter. As far as I can see, there are 2 issues here that needs to be addressed: (i) is the notice to terminate supported with evidence as it relates to cause and (ii) is the notice issued technically valid.
18. I will address the issue of cause first. Both of the items noted above will have to be accepted in order for this notice to be determined valid. If either are not supported then the notice cannot be valid.

19. The tenant has issued a termination notice claiming the landlord interfered with the peaceful enjoyment and reasonable privacy of the tenant. The only piece of evidence that could even possibly deal with interference with peaceful enjoyment would be the series of text conversation between the parties. Even this piece of evidence comes nowhere close to suggesting that the landlord did anything but attempt to address a concern raised by the tenant in a timely fashion. The fact that a tenant may have not liked the tone of an email from a landlord does not constitute grounds for interference with peaceful enjoyment to even remotely suggest that a contract could be overturned because of such.
20. After considering all the evidence, I find that there was no cause to issue an early termination notice under section 23 of the Residential Tenancies Act, 2018. To elaborate a little further in anticipation that the tenant may have considered terminating based on the habitability of the property, I would strongly suggest that this type of notice would also not meet the requirements for the notice to be rendered valid.
21. As such, I find that the termination Notice issued by the tenant under section 23 of the RTA, 2018 and dated 05 June 2020 is determined to be not valid.

## **Decision**

22. I find the notice issued by the tenant is determined to be not valid.

## **Issue 2: Rent Owing - \$203.23**

### **Relevant Submissions**

#### Landlord Position

23. The landlord stated that they had entered into a written fixed term rental agreement with rent set at \$700.00 per month and due on the 1<sup>st</sup> day of each month. The landlord testified that the tenant vacated the property on 11 June 2020 as a result of a termination notice (**Exhibit T # 1**). The landlord feels that this notice was not valid in his opinion.
24. The landlord stated he was able to re-rent the property for 10 July 2020 by placing an ad on the local Facebook classifieds. The landlord testified that the new tenants signed the agreement on 01 July 20 and moved into the unit on 10 July 2020. No rent was collected from 01 Jul to 9 July 2020. The landlord submitted a copy of the new tenants' rental agreement (**Exhibit L # 1**) along with a copy of the rent ledger (**Exhibit L # 2**).

25. The landlord is claiming rent in the amount of **\$203.23** up to and including 09 July 2020 calculated as ( $\$700.00 \times 12 \text{ Months} = \$8400.00 \div 366 \text{ days} = \$22.95 \times 9 \text{ days} = \$206.55$ ).

### Tenant Position

26. The tenant disputes this portion of the claim stating that she had to leave early because of the mold in the bathroom and because of the way the landlord was speaking to her. She further disagrees with the claim as she claims the landlord has a tenant and also wants her to pay as well.
27. The tenant testified that when she notified the landlord of the mold issue, it was not addressed in a reasonable time frame and therefore she had no choice but to terminate.

### **Analysis**

28. I have reviewed the testimony and evidence of the landlord and tenant in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenant.
29. A decision above has determined that a termination notice issued by the tenant is not valid. Further we know from evidence that the tenant was contractually obligated to the rented premises until 31 January 2021. I further accept the evidence of the landlord that the landlord mitigated any potentially loss by placing an ad on the local Facebook classifieds and was able to secure a tenant for 10 July 2020.
30. As the tenant vacated without a valid notice, the unit would be considered abandoned. Rent was paid up to 30 June 2020 and the landlord secured a new tenant for 10 July 2020 thereby eliminating any contractual obligation of the tenant beyond 09 July 2020. I find that the tenant is responsible for rent for the period 01 July to 09 July 2020 in the amount of \$203.23 as claimed. The actual calculated amount of rent owed is slightly more but as the landlord only claimed \$203.23, this is the maximum I can award.

### **Decision**

31. I find the landlord's claim for rent is successful in the amount of **\$203.23**.

## **Issue 2: Payment of Utilities - \$50.95**

### Landlord Position

32. The landlord is seeking payment of utilities as a result of the tenant's abandonment of the property up to 09 July 2020.
33. The landlord submitted copies of the NL Power invoices (**Exhibit L # 5 & 6**) totaling \$32.08. The landlord testified that as the tenant is contractually obligated for the agreement, they are too obligated for the electrical service.

### Tenant Position

34. The tenant acknowledged the amount of the electrical services and stated that she "can't deal with this anymore".

### **Analysis**

35. After review of the evidence and considering that it has been determined that the tenant is contractually obligated to the agreement up to 09 July 2020, I find that the tenant is responsible for the electrical expenses associated in the amount of **\$32.08**. It should be noted that the second NL Power Invoice also includes the carry over charge of the first invoice so the total expense is actually \$32.08.

### **Decision**

36. The landlord's claim for utilities succeeds in the amount of \$32.08.

## **Issue 4: Compensation for Damages - \$103.17**

### **Relevant Submissions**

#### Landlord Position

37. The landlord testified that upon recovery of the unit it was noted that a chandelier in the property was missing crystals (**Exhibit L # 7**) and replacement crystals could not be found. The landlord testified that the unit was approximately 4 years old and supplied an estimate from Amazon (**Exhibit L # 8**) for the cost of \$67.97 plus HST totaling \$78.17. The landlord further stated that he is claiming \$25.00 for the installation of the light.

## Tenant Position

38. The tenant testified that she has no idea about the damage to the chandelier.

## **Analysis**

39. The basis of determining awards for any damage claim is the same. The applicant holds the burden of proof and in cases associated with Residential Tenancies is “on the balance of probabilities”.
40. In presenting a claim the applicant is required to
- a. show that a damage exists;
  - b. show that the respondent is liable for the damages and;
  - c. show a cost for the repair or replacement of the damages.
41. On the matter above, the applicant has shown the existence of damage and has provided a cost evaluation for a replacement. The success of the claim rests with the question then, is the tenant liable for the damage as a result of a willful or negligent act.
42. The tenant testified that she did not know about the claimed damage to the light. The landlord has not presented any evidence regarding the condition of the fixture at the onset of the tenancy. Without this sort of evidence or some other confirming evidence to the condition of the fixture prior to the tenancy, I am unable to determine if the claimed damage existed prior to this tenant. As such, the landlord has failed to show that this tenant was liable for the damage being claimed. Therefore, this portion of the landlord’s claim fails.

## **Decision**

43. The landlord’s claim for damages fails.

## **Issue 5: Other - \$7.99**

### **Relevant Submissions**

#### Landlord Position

44. The landlord is claiming for the cost of advertising the property on Kijiji earlier than expected. The landlord submitted an invoice for the charge for the rental ad in the amount of \$7.99 (**Exhibit L # 9**).

### Tenant Position

45. The tenant presented no comments or defense on this matter.

### **Analysis**

46. It has been determined above that the tenant did abandon the unit and was contractually responsible for the property. The abandonment forced the landlord to advertise earlier than expected and therefore incur a cost not expected in the amount of \$7.99. I find that this cost is reasonable and find that the tenant is responsible for this charge.

### **Decision**

47. The landlord's claim for the Ad expense is successful in the amount of \$7.99.

## **Issue 6: Application of Security Deposit**

### Landlord Position

48. The landlord testified that a security deposit in the amount of \$525.00 was paid on the property on or about 15 January 2020. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.

### Tenant Position

49. The tenant is seeking the disposition of the security deposit.

### **Analysis**

50. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$525.00. The landlord's claim has been successful. The security deposit plus accrued interest is \$525.00 as the interest rate for 2020 is set at 0%.

### **Decision**

51. As the landlord's claim above has been successful, the landlord shall offset the security deposit being held as determined in the attached Order.



**Summary of Decision**

52. The tenant is entitled to the following:

- a) Refund of Security Deposit .....\$525.00
- b) LESS: Rent Owing ..... (203.23)
- c) LESS: Utilities Owed ..... (32.08)
- d) LESS: OTHER ..... (7.99)
  
- f) **Total owing to Tenant.....\$281.70**

14 January 2020

**Date**



**Michael Greene**  
**Residential Tenancies Tribunal**