

Residential Tenancies Tribunal

Decision 21-0017-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:00 am** on **04 June 2021** 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], hereafter referred to as landlord1 participated in the hearing. (*Affirmed*).
3. The applicant, [REDACTED], hereafter referred to as landlord2 participated in the hearing. (*Affirmed*).
4. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing. (*Affirmed*).
5. The details of the claim were presented as a written monthly agreement with rent set at \$600.00 per month as stated by the landlords and \$400.00 per month as stated by the tenant and due on the 1st of each month. A security deposit in the amount of \$300.00 was collected on or about 09 December 2017. The landlords issued a termination notice on 01 April 2021 for the intended termination date of 10 April 2021 under section 24 of the *Act*.
6. 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

7. The affidavit submitted by the landlords (not sworn) shows that the tenant was served with the notice of this hearing on the **22 April 2021** by serving the original documents to the tenant by personal service to the rented premises.
8. The tenant did not submit an affidavit of service.
9. Both parties agreed to proceed with the hearing and wave their right of proper service.
10. A phone call was placed to the tenant at [REDACTED]. Contact was made and the tenant joined the hearing.

Issues before the Tribunal

11. The landlords are seeking the following:
 - a) Vacant possession of the rented premises;
 - b) Hearing expenses.
12. The tenant is seeking the following:
 - c) Repairs;
 - d) Return of Possessions;
 - e) Other
 - f) Hearing expenses.

Legislation and Policy

13. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
14. Also relevant and considered in this case are Sections 19, 34 and 35 of *the Act*; and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Repairs/rebate of rent - \$250.00/month

Relevant Submissions

Tenant Position

15. The tenant testified that he sent the landlords a list of items to be completed (**Exhibit T # 1**) and testified that he posted it on the door of the landlords' property on 26 February 2021. The tenant stated that he left the list with the landlords for a couple months and testified that the landlords failed to make any repairs.
16. The tenant identified at the hearing the required repairs as:
 - a. Replace heater in the living room and hallway
 - b. Replace living room window
 - c. Repair drafts in the property
 - d. Replace window in son's bedroom (only 1 pane of glass)
 - e. Repair front steps (Unsafe)
17. The tenant submitted photos of the screen door (**Exhibit T # 2 A-E**) and pointed out the insulation used to block the drafts. The tenant further submitted a photos of the front steps (**Exhibit T # 3 & 3A**).
18. The tenant testified that the landlords will not do any repairs to the property.

Landlord Position

19. The landlords disputed the tenant's claim and vehemently asserted that it is their opinion that the counterclaim of the tenant should be struck down without merit.
20. The landlords testified that they had no issues with the tenant until January 2021. They stated that there was constant complaints from the tenant and he would not let them in to complete any repairs.
21. The landlords referred to the text messages between the parties (**Exhibit L # 1**) as proof that the tenant would not let the landlords into the property to complete any repairs. He testified that the tenant would demand a contractor for everything in the property.

Analysis

22. I have reviewed the testimony and evidence of the tenant and landlords in this matter. The issue of repairs to be completed is a complex one. There is the basic requirement of a landlord to maintain the properties they rent as guided by section 10(1)1. of the *Residential Tenancies Act, 2018*. Similarly, there is the

idea that the tenant shall not interfere with the rights of the landlord as it relates to the property. In this claim, it is apparent that the two overlap.

23. The tenant's options when they feel that a material term of a rental contract has been breached (failure to maintain the property) are limited. The tenant can:
 - a. Provide a written notification of the breach and if the breach is not rectified in a reasonable time, the tenant may give a notice of termination for not less than 1 month before the end of the rental period or;
 - b. Provide a written notification of the breach and if the breach is not rectified in a reasonable specified time, file an application seeking appropriate redress.
24. The tenant in this matter is seeking redress in the amount of \$250.00 reduction of rent per month until the required repairs are complete. With the application it is incumbent on the applicant to substantiate their claim. The process requires that a formal request for the repairs be completed and served on the landlords. Further, there is a requirement for the tenant to provide a specified date on which the repairs are to be complete.
25. The tenant has provided a hand written document (**Exhibit T # 1**) that outlines a list of repairs to be completed (5 in total). The document does not specify a date on which to have the repairs completed but merely indicates that these items need to be done.
26. The tenant has only provided evidence to the condition of the screen door and the steps. I can concur that the steps shown in the pictures do not in any way you look at things, conform to any current or former building codes. The ramp is put together with what appears to be left over lumber with asphalt shingles placed on the runway for some sort of grip. It is not clear if the ramp is even secured to the deck and the placement of the ramp creates its own tripping hazard. The repair of these steps are clearly the responsibility of the landlords and should be addressed immediately.
27. Further, the screen door depicted shows some gaps that need adjusting. It is unclear the extent as the insulation is blocking the areas of concern. The fact that insulation is placed there tells a significant portion of the story. However, the screen door is merely an outside door followed by a steel main entrance and is not actually required. It is not apparent that there were any areas of concern on the steel door and therefore I can only assume that all is good with the main entrance. There would be two possible fixes for the door in this regard:
 - a. Adjust the screen door to minimize to gaps or;
 - b. Remove the screen door.

28. Either of the two options would suffice to conform to minimum standards. As for the balance of the listed items, there has been no evidence presented to substantiate that the items actually require repair and therefore will not be address in this decision.
29. I find that the landlords are responsible to ensure the following items are corrected and conform to current building codes:
 - a. Replace the existing ramp with properly constructed steps that conform to current building codes for the Province of Newfoundland and Labrador such that they ensure the safe passage of the tenants and guests to the property and;
 - b. Repair the screen door and bring the entrance to an acceptable standard as it relates to current building codes (with or without the screen door).
30. Further, I find that the tenant's request for a rebate of rent on a monthly basis of \$250.00 to be excessive. I find that the tenant shall rebate the monthly rent by \$50.00 from \$600.00 to \$550.00 effective 01 July 2021 and continue until such time as the landlords make the repairs above and provides this tribunal with documented proof the repairs are complete and conform to current building codes or until the tenant vacates. I further find that the tenant is entitled to the rebate in the amount of **\$200.00** for the months of March – June 2021 (4 months).
31. It is further ordered that the tenant shall in no way hinder the landlords or their agent's ability to make the repairs or to harass the landlords or their agents in their efforts to make the repairs.
32. Lastly, upon proof being provided by the landlords of the completed repairs, this tribunal will issue a subsequent order reinstating the rental payment to their original amounts.

Decision

33. The tenant's request for repairs succeed as outlined above and in the attached order.

Issue 2: Return of Possessions - \$70.00

Tenant's Position

34. The tenant is seeking the return of the following which he claims was removed from the property by his landlord:
 - a. 1 Gallon of Paint
 - b. 1 roller set
 - c. 1 tub of putty and knife
 - d. 1 brand new screw driver set

35. The tenant testified that his girlfriend witnessed the landlords removing the items from the property and referred to her statement into evidence **(Exhibit T # 4)**. The tenant did not provide any receipts for the purchase of the items nor any further evidence that the property was in the unit.

Landlord Position

36. The landlords disputed the claim and stated that the tenant has a good imagination and is constantly lying.

Analysis

37. The tenant is seeking the cost of replacement of possessions removed from the rental unit by the landlords.

38. It is incumbent on the applicant (tenant in this portion) to substantiate their claim on the balance of probabilities. I note that the statement provided by the tenant from his girlfriend is not a sworn statement and is written on similar paper he used to provide his claim summaries. The witness was not present to verify her statement and therefore this statement has to be considered hearsay evidence and weighted accordingly.

39. The tenant has also failed to document a value of the items in the claim with any receipts nor was there any further supporting evidence that the items actually existed. As such, I find that the tenant's claim for return of possessions fails.

Decision

40. The tenant's claim for a return of possessions fails.

Issue 3: Vacant Possession of the Rented Premises

Landlord Position

41. The landlords are seeking to recover possession of the rented premises located at [REDACTED].
42. The landlords testified that there was no issues with the tenant until January 2021 when he became difficult and abusive in his language. The landlords indicated that the tenant would mention things to be repaired and when they attempted to go to the unit to repair it, the tenant would refuse them entry and verbally abuse them and send text messages that were abusive (**Exhibit L # 1**).
43. Landlord1 further indicated that his wife had submitted a statement (**Exhibit L # 3**) which was not sworn but was attested to at the hearing under oath. In the statement the witness indicates that the tenant would taunt the landlords with the money for the payment of rent and laugh and ridicule them. The witness added that there was many times that the tenant would not let them into the property to fix items requested to be repaired (heater, water, door lock, etc).
44. Landlord1 testified that he is fed up with the antics of the tenant and issued a section 24 termination notice (**Exhibit L # 2**) on 01 April 2021 for the intended termination date of 10 April 2021.

Tenant Position

45. The tenant disputed the landlords seeking possession of the property stating that it was the landlords that has caused the problems. He further indicated that the landlords are the ones who has not made any efforts to repair the property. He indicated that it was the landlords who indicated for the tenant to "[REDACTED]". This statement has not been corroborated with any supporting evidence.
46. The tenant testified that he understood what the landlords are seeking in this application.

Analysis

47. Established by undisputed statement of fact above, the rental agreement is a written monthly tenancy. The validity of the termination notice is determined by its compliance with the notice requirements identified in Sections 24. (1), (2), Section 34, the service requirements identified in Section 35, as well as the merits of the case.
48. Section 24. (1) requires that where a tenant contravenes statutory condition 7(a) set out in section 10(1), the landlords may give the tenant a termination notice to vacate the property on a specified date not less than 5 days after the notice is served.

49. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 2**), I find the notice was served on 01 April 2021 with a termination date of 10 April 2021. I find that as the date of termination identified on the notice is not less than 5 days after the notice has been served and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of Section 24.
50. Sections 24 (2) and 34 identify the technical requirements of the termination notice as identified below. On examination of the termination notice, I find that all these criteria have been met.
51. The Section 24 notice that has been issued requires that the applicant show on the balance of probabilities that there was just cause for the issuance of a short notice.
52. The behaviors described by the landlords and corroborated by the witnesses and copies of text messages from the tenant to the landlords, is concerning. The evidence depicts the tenant as an individual who demanded as opposed to requested things from his landlords. The tenant thought it ok to threaten to withhold rent to satisfy his demands. In addition the tenant was free with demoralizing comments towards the landlords. The tenant should realize or become informed that there are processes in place if he feels that there are inadequate repairs being completed. The current mode of action is not adequate and wouldn't work with most individuals. A tenant does not have the right to demand who attends to a request for repairs and any blocking of the landlords of a legal entry would be interference with the landlords' peaceful enjoyment.
53. The tenant has indicated that the landlords have used demoralizing comments regarding his son, but has failed to demonstrate the comments with evidence.
54. I find that the tenant has unreasonably blocked access to the landlords by refusing them entry to make requested repairs because of what is seemingly a personality conflict with the landlords. I find that the tenant has interfered with the peaceful enjoyment of the landlords. The landlords have established there was just cause for issuing a short notice under the *Residential Tenancies Act, 2018*.
55. As identified above, the landlords testified that the termination notice was served personally which is a permitted method of service identified under Section 35.
56. According to the reasons identified above, I find that the termination notice issued by the landlords to be proper and valid. Therefore, the landlords are entitled to an order for vacant possession along with an order for any incurred costs to certify the order and all costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

57. The landlords' claim for vacant possession succeeds. The landlords are further awarded cost associated with the certification of an order and the enforcement of the Possession Order by the High Sheriff of NL.

Issue 4: Other - \$50.00

Tenant Position

58. The tenant testified that he had to spend \$50.00 of his own money to purchase duct tape to tape up the drafts in the house. The tenant did not provide any receipts for the purchase of the duct tape, nor was there any photos to show where it was placed or needed.

Landlord Position

59. The landlords did not make any comments on this portion of the claim.

Analysis

60. I have reviewed the testimony and evidence of the tenant and landlords in this matter. The tenant has failed to substantiate the claim with evidence of the purchase of the item or the need for it. As such, this portion of the tenant's claim fails.

Decision

61. The tenant's claim for the purchase of duct tape fails.

Summary of Decision

62. The landlords and tenant are entitled to the following:

- a) Rent Rebate (*\$50.00 @ 4 months Feb – June, 2021*).....\$200.00
- b) Total Owing to the Tenant.....\$200.00**
- c) Monthly rent rebate of **\$50.00** beginning July 1, 2021 and continuing until the landlords make the repairs and a subsequent order is issued from this tribunal or until such time as the tenant vacates the property.
- d) It is further ordered that the tenant shall in no way hinder the landlords or their agent's ability to make the repairs or to harass the landlords or their agents in their efforts to make the repairs.

- e) Vacant Possession of the Rented Premises
- f) Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order
- g) Any incurred costs associated with the certification of attached orders.

16 June 2021

Date



Michael Greene
Residential Tenancies Tribunal