

## Residential Tenancies Tribunal

Decision 19-0044-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 9:15 a.m. on February 11, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED], hereafter referred to as landlord, participated in the hearing.
3. The tenant, [REDACTED], hereafter referred to as tenant, was not present at the hearing.

### Preliminary Matters:

4. The landlord called the following witness:
  - a. [REDACTED]
5. The landlord amended the application to reflect the tenant's name as [REDACTED].

### Issues before the Tribunal

6. The landlord is seeking the following:
  - a. Vacant possession of the unit;
  - b. Payment of rent in the amount of \$800.00;
  - c. Payment of utilities in the amount of \$81.54;
  - d. Hearing expenses.

### Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), section 47.

7. Also relevant and considered in this case are Sections 19, 24 and 34 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF.*

**Issue 1: Payment of rent**

8. In determining an application for the payment of rent, the landlord is required to establish the rental rate and the payment record.

Landlord Position

9. The tenant moved into the unit on December 1, 2018 on a month to month tenancy with rent set at \$800.00 per month due on the 1<sup>st</sup> of each month. A security deposit in the amount of \$400.00 was paid in November 2018.
10. The landlord testified the tenant paid the rent for the months of December 2018 and January 2019 but she has not received the rent for the month of February 2019.

**Analysis**

11. I have reviewed the testimony and evidence of the landlord and I find the rent has not been paid for the month of February 2019. Rent for the month of February can only be awarded up to the date of the hearing (February 11, 2019). The amount of rent owing for February 2019 is \$289.30 (\$800.00 x 12 months = \$9600.00 ÷ 365 days = \$26.30 per day x 11 days = \$289.30). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$26.30 beginning February 12, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises

**Decision**

12. The landlord's claim for rent succeeds as per the following:
  - a. Rent owing for February 1 – 11, 2019..... \$289.30
  - b. Total arrears..... \$289.30
  
  - c. A daily rate beginning February 12, 2019 ..... \$ 26.30

**Issue 2: Vacant Possession of the Rental Premises**

13. An application for vacant possession is determined by the validity of the termination notice issued by the landlord. In this case, the termination notice was issued under Section 24 of the Act where the tenant contravenes the

statutory conduct regarding peaceful enjoyment and reasonable privacy under Section 10.(1) 7.(a).

### Landlord Position

14. The landlord testified she served a termination notice (LL #1) on the tenant on January 12, 2019 under Section 24 of the Act to vacate by January 18, 2019 because she received noise complaints from the upstairs tenant. On December 19, 2018 the landlord received a call from the upstairs tenant complaining about the noise coming from the downstairs unit late in the night, around 3:00 a.m. The upstairs tenant told her it was really noisy and it sounds like there was fighting going on downstairs. It has been going on for a few nights previous. The next day the landlord spoke with the tenant and she told the tenant she would have to leave if it continues.
15. The landlord further testified she received another complaint from the upstairs tenant on December 27, 2018 concerning the banging of doors and the screaming coming from the downstairs unit. The landlord tried to reach the tenant but she was unable to reach her. Then on January 12, 2019 around 5:30 a.m. she received a call from the police informing her they received a noise complaint from the upstairs tenant. The police were trying to get into the unit but the tenant would not let them in so she had to go to the unit and let the police into the unit. The police told her when they went into the unit, the tenant was in bed. The landlord said she has not received any other complaints.

### Witness Position

16. The witness testified that shortly after the tenant moved into the unit the noise started. There would be banging and screaming. It sounded like the tenant was fighting with someone. The noise would be 6 days out of 7 and it would last 12 – 14 hours a day. Sometimes the noise would end at 5:00 a.m. and start again at 7:00 a.m. The witness said she notified the landlord a few times. She also said one morning around 5:30 a.m. she called the police because the noise was getting way out of control. It sounded like there were other people in the unit.
17. The witness also testified that it has been a while since she has heard any noise as the tenant is never at the unit but her belongings are still in the unit.

### **Analysis**

18. I have reviewed the testimony and the evidence of the landlord and the witness in this matter. Based on the testimony presented I find there is noise

coming from the downstairs unit early in the morning and it is interfering with the upstairs tenant's peaceful enjoyment.

19. Section 10.(1) 7.(b) doesn't allow for the tenant to unreasonably interfere with the rights of the landlord and other tenants in the residential premises. As the noise was interfering with the rights of the tenant living upstairs, the landlord had grounds to terminate the tenancy under section 24 of the Act.

### **Decision**

20. The claim for vacant possession succeeds. The landlord is further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

### **Issue 3: Payment of utilities - \$81.54**

#### Landlord position

21. The landlord testified the tenant was responsible for her own utilities. The tenant never had the power bill converted to her name until December 15, 2019. The landlord received the power bill (LL #2) in the amount of \$112.96 for December 14, 2018. Prior to receiving this power bill, the landlord's last power bill (LL #2) covered the period October 31 – November 16, 2018 in the amount of \$31.42. The landlord is deducting \$31.42 to cover the period November 17 – 30, 2019.

### **Analysis**

22. I have reviewed the testimony and the evidence presented and I find the tenant was responsible for her own utilities. The tenant did not have the power bill converted to her name until December 15, 2018. The landlord incurred cost for the utilities for the period December 1 - 14, 2018 in the amount of \$81.54 ( $\$112.96 - \$31.42 = \$81.54$ ).

### **Decision**

23. The claim for payment of utilities succeeds in the amount of \$81.54.

### **Issue 4: Refund of the security deposit**

24. Under the authority of section 47.(j) the director may authorize a landlord to offset money a tenant owes to the landlord against money the landlord owes to the tenant. Further under subsection (m), the director has the authority to determine the disposition of the security deposit.

**Analysis**

25. The tenant paid a security deposit in the amount of \$400.00 in November 2018. As the landlord has been successful in her claim for rent and utilities she shall retain the security deposit as outlined in this decision and order.

**Decision**

26. The landlord shall retain the security deposit as outlined in this decision and attached order.

**Issue 5: Hearing Expenses**

27. 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, Hearing Expense, Interest, Late Payment and NSF.*

Landlord Position

28. The landlord paid an application filing fee in the amount of \$20.00. The landlord is seeking this cost.

**Analysis**

29. The cost the landlord incurred to make the application is considered a reasonable expense as per Policy 12-1: *Recovery of Fee: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF.* Therefore, I find the tenant is responsible to cover the cost of the application filing fee.

**Decision**

30. The tenant shall pay the landlord’s hearing costs in the amount of \$20.00.

**Summary of Decision**

31. The landlord is entitled to the following:

a) Rent owing .....	\$289.30
b) Payment of utilities.....	\$81.54
c) Hearing expenses .....	<u>\$ 20.00</u>
d) <b>LESS: Security deposit .....</b>	<b><u>(\$400.00)</u></b>

- e) **Balance** ..... **\$9.16**
- f) Vacant Possession of the rented premises
- g) A daily rate of rent in the amount of \$26.30 beginning February 12, 2019 and continuing until the day the landlord obtains possession of the rental unit.
- h) The landlord is authorized to retain the **\$9.16** balance of the security deposit to offset any rent owing from the date of the hearing until the landlord obtains vacant possession of the unit.
- i) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

February 15, 2019  
Date

  
Residential Tenancies Section