

Residential Tenancies Tribunal

Decision 19-18-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 24 April 2019 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 respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the landlords”, did not participate.

Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$497.50, a refund of rent in the amount of \$497.50, compensation for inconvenience in the amount of \$18,000.00 and the determination of the validity of a termination notice.

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 14 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The landlords were not present or represented at the hearing. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondents

fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The tenant submitted an affidavit with her application stating that the landlords were served with notice of the hearing, by e-mail, on 12 April 2019 and they have had 11 days to provide a response. The tenant also submitted a copy of that e-mail as well as a copy of additional e-mail correspondence she had had with the landlords at that address. As the landlords were properly served, and as any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in their absence.

Issue 1: Validity of Notice

Relevant Submissions

The Tenants' Position

7. The tenant stated that she had entered into a monthly rental agreement with the landlords on 01 May 2018. The agreed rent was set at \$995.00 per month and the tenant testified that she had paid a security deposit of \$497.50.
8. The tenant stated that when she moved into the rental unit she had indicated to the landlords that she would prefer to reside in a larger apartment. During the summer of 2018 a larger apartment did become available and the tenant expressed to the landlords her interest in renting that unit. After viewing the unit after renovations had been carried out, the tenant decided that she would not rent this newly available apartment because of a bad odour.
9. Thinking that the tenant would be moving into the larger apartment, the landlords went ahead and re-rented her apartment. On 03 September 2018 the landlords informed her that because her unit was now re-rented, she would have to vacate by 15 September 2018.
10. The tenant stated that although she was only given 12 days to vacate she nevertheless was moved out of the unit by 15 September 2018.
11. The tenant is seeking a determination of the validity of the verbal notice she was given on 03 September 2018.

Analysis

12. Section 18 of the *Residential Tenancies Act, 2018* outlines the requirements landlords must abide by when terminating rental agreements and the relevant subsections state:

Notice of termination of rental agreement

18. (2) *A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises*

...

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and

....

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

(a) be signed by the person providing the notice;

(b) be given not later than the first day of a rental period;

(c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and

(d) be served in accordance with section 35.

13. As can be seen from this section of the Act, a landlord is required to give the tenant at least 3 months' notice that the rental agreement is terminated. A notice given on 03 September 2018 with an effective termination date of 15 September 2018 is therefore invalid.
14. That notice is also invalid for several other reasons. Besides the fact that it did not meet the 3-month notice requirement, it also did not specify a termination date which was the last day of the rental period, which in this tenancy fell on that last day of the month. The notice was also a verbal notice and therefore met none of the provisions set out in s. 18.(9)(a), s. 34 or s. 35.

Decision

15. The termination notice issues to the tenant on 03 September 2018 is not a valid notice.

Issue 2: Refund of Security Deposit - \$497.50

Relevant Submissions

The Tenants' Position

16. The tenant stated that she had paid a security deposit of \$497.50 on 13 April 2019.
17. She stated that that deposit was not returned to her after the tenancy ended and she also testified that she had not entered into any written agreement with the landlords on its disposition.
18. The tenant is seeking an order for a return of that security deposit.

Analysis

19. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

Security deposit

14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

(10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

(11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

20. I accept the tenant's claim that the deposit had not been returned to her after she moved out and I also accept her claim that she had not entered into any written agreement with the landlords on the disposition of that deposit.
21. As the landlords had not made application to the Director seeking a determination of the disposition of that deposit, they are required, as per s. 14.(2), to refund the full amount of that deposit to the tenant.

Decision

22. The tenant's claim for refund of the security deposit succeeds in the amount of \$497.50.

Issue 2: Refund of Rent - \$497.50

Relevant Submissions

The Tenant's Position

23. The tenant stated that she had paid the full rent of \$995.00 for September 2018.
24. The landlord terminated her agreement on 03 September 2018 and the tenant vacated on 15 September 2018. The tenant argued that as she had vacated the unit on 15 September 2018 as required, she is entitled to a refund of half the rent she had paid for that month: \$497.50.

Analysis

25. "Rent" is defined in s. 2.(g) of the *Residential Tenancies Act, 2018* as "money or other value paid, or required to be paid under a rental agreement, by a tenant to a landlord before or during the use or occupancy of a residential premises for the use or occupation of the residential premises".
26. As the tenant did not have use or occupancy of the rented premises after 15 September 2018 I agree with her that she cannot be charged rent after that date and that half the rent she had paid for that month ought to be returned to her.

Decision

27. The tenant's claim for a refund of rent succeeds in the amount of \$497.50.

Issue 3: Compensation for Inconvenience - \$18,000.00

Relevant Submissions

The Tenant's Position

28. The tenant stated that after she vacated the rental unit on 15 September 2018 she was required to find, on short notice, a new apartment to move into.
29. She stated that she moved into the basement apartment of her own home but she claimed that because that apartment was so small she was unable to fit all of her furniture in there. As such, the tenant gave away the bulk of her furniture and she is seeking to recoup from the landlords the costs she had incurred when she originally purchased it. She submitted the following list (MP #11):

- Maple dining table and 6 chairs \$5390.00
- Bedroom set, mattress, box spring \$5500.00
- Bedroom furniture \$6325.00
- Living room sofa and 2 chairs \$4600.00

Total \$21,815.00

30. The tenant is also seeking \$1000.00 for temporary accommodations, \$250.00 for the costs of hiring movers and \$435.00 in compensation for time lost at work.
31. No receipts or supporting documentation were submitted at the hearing.

Analysis

32. Moving from one apartment to another is always inconvenient, and given that the landlords had only given the tenant 12 days to move, I agree with her that they are responsible for some of the inconvenience she had suffered.
33. However, I was not persuaded that the tenant is entitled to the costs she is seeking here.
34. First of all, no evidence was presented at the hearing to establish the costs of her furniture, the costs of hiring movers, etc. and in that respect I do not have enough information to make a determination.
35. But more importantly, when an applicant is making a claim for damages, in this case, the loss of her furniture, it must be established that the applicant had lived up to her legal duty to take all reasonable steps to mitigate those damages.
36. As far as I can see, I don't think the tenant had lived up to that duty and I believe that there were other courses of action open to her that would have been less costly. For example, the tenant could have sold her furniture instead of giving it away. Or she could have rented a storage locker. Or she could have moved into

an apartment that had room for a bed, bedroom furniture, a table and chairs and living room furniture—I suspect that the vast majority of apartments for rent on the northeast Avalon Peninsula could accommodate those furnishings.

Decision

37. The tenant's claim for compensation for inconvenience does not succeed.

Issue 4: Hearing Expenses

38. As the tenant's claim has been successful, the landlord's shall pay her hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

39. The tenant is entitled to the following:

- Refund of security deposit..... \$497.50
- Refund of rent..... \$497.50
- Hearing expenses..... \$20.00

Total Owing to Tenant..... \$1015.00

11 July 2019

Date


John R. Cook
Residential Tenancies Tribunal