

Residential Tenancies Tribunal

Applications: 2022 No. 0243 NL

Decision 22-0243-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:03AM on 6 June 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing.
3. The respondent, [REDACTED], as represented by [REDACTED] and hereinafter referred to as "the landlord", participated in the hearing.
4. An affidavit of service was provided by the tenant (T#1) confirming that the landlord was served electronically of the claim against her. The landlord confirmed receipt of service.
5. The details of the claim were presented as a fixed term rental agreement that began on 1 June 2021 and is currently operating as a month-to-month agreement. Monthly rent is set at \$1,400.00 and a security deposit of \$1,050.00 was collected on 06 May 2021. A copy of the written rental agreement was provided by the landlord (L#1).
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. The standard of proof, in these proceedings, is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

7. The tenant is seeking the following:
 - Validity of the termination notice;
 - Rent refunded in the amount of \$2,000.00;
 - Compensation paid for inconvenience in the amount of \$2,425.00; and
 - Utilities paid in the amount of \$2,500.00.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).

Preliminary Matters

9. The tenant and his family (wife and two young children) rent the main floor unit of a split level home located at [REDACTED]. Their unit is a 3 bedroom unit with approximately 1,200 square feet of space on the main floor with an additional 13x12 family room space and laundry space on the bottom floor of the rental premises. There is also a separate rental unit on the bottom floor of the rental premises, accessed by the side door that is rented by others.
10. The tenant's unit is heated by electric heat.
11. The landlord for the rental premises is the property manager, not the property owner.

Issue 1: Payment of Utilities \$2,500.00

Tenant's Position

12. The tenant submitted a computer print out of his monthly billing history with Newfoundland Power for the months of June 2021 through to March 2022 (T#2). He was charged a total of \$3,004.34 for power during this time. Because utilities are paid separately from rent, these charges have been paid directly by the tenant.
13. The tenant stated that he had a "gentlemen's agreement" with the landlord when he moved into the rental premises, and that the purpose of this agreement was for the landlord to fix a number of issues that the tenant had flagged, including among other things, the front door to the unit. The tenant referred to an email he sent on 14 June 2021 to the landlord where he documented his concerns with the "unfinished state" of the apartment, and specifically documented that "main entrance doors are really in a bad shape, with gaps" (see page 1 on T#3).

14. The tenant testified that his family had to consume extra power while residing in the rental premises due to the gaps around the frame of the front door that allow wind and water into the rental premises. The tenant stated that the wind makes things too cold inside the rental premises and he quoted an email received from the landlord on 28 February 2022 where the landlord wrote that she would "investigate and see about getting (the tenant) a reimbursement" from his power bills for December 2021, January and February 2022 (see page 5 on T#3).
15. The tenant further testified that his family would use blankets to attempt to block the wind from coming in through the door. However, no pictures or videos were provided to illustrate his specific concerns with the door. Nor was any data gathered or provided related to specific or average temperature values in the rental premises as it related to external weather patterns (said to be coming through the gaps in the door). The tenant also testified that he and his family heat the household by turning the thermostat to 25-30 degrees Celsius.
16. The tenant testified that he and his family previously rented a very similar unit nearby and that he considered his costs for electric heating of the rental premises to be "high" compared to electric heating costs he previously incurred.

Landlord's Position

17. The landlord testified that the front door at the rental unit is a standard exterior door and that it was recently replaced in May 2022. Regarding the tenant's concerns with the previous front door, the landlord referred to her service records and testified that the door was serviced twice (July 2021 and February 2022) in response to requests from the tenant.
18. The bottom sweep of the door was replaced in July 2021 and then the sweep was replaced again in February 2022. Additional weather stripping was also installed after the door was realigned at that time. The landlord testified that the contractor's feedback from this February 2022 service call was "no drafts present".
19. The landlord testified that her company prioritizes all maintenance and service requests based on availability and severity, responding sooner to critical issues than to cosmetic concerns. She also confirmed that the two units in the rental premises have their own electric panels.
20. Because utilities are paid by the tenant, the landlord did not have comparative information available on the cost of electric heating over previous winters. The landlord acknowledged the email cited by the tenant where she stated she would check with the homeowner about a possible electric rebate. The landlord testified that the property owner rejected this request.

Analysis

21. The tenant is requesting a rebate from the landlord for monies he has paid directly to Newfoundland Power for heat. His reasoning for this request, was that the landlord “did not fix” the main door and that “gaps” around the door frame resulted in higher than expected costs from Newfoundland Power for electric heat. From looking at the billing history provided by the tenant, I note that his monthly costs for winter heating ranged from \$380-\$560 a month.
22. I also note that the tenant is seeking an 83% rebate on monies paid (e.g., \$2500 out of \$3,004) paid to Newfoundland Power for electricity, including electric heat. Considering that there are two adults and two young children residing in this approximately 1500 square foot two story unit that is said to be kept at temperatures of 25-30 degrees Celsius, the utility bills provided by the tenant as evidence, seem standard.
23. Furthermore, all testimony and evidence considered in this hearing strongly suggested that the landlord was continually prompt and comprehensive in their responses to the tenant. I find that the landlord did their due diligence in having the front door of the rental premises serviced on two occasions.
24. As such, I find the tenant’s request for the 83% rebate on monies paid to be unreasonable and unjustified.

Decision

25. The tenant’s request for payment of utilities in the amount of \$2,500.00 does not succeed.

Issue 2: Compensation Paid for Inconvenience (\$2425.00)

Tenant’s Position

26. The tenant stated that his children are “allergic to cold” and so he put his wife and his two kids in a room at the Sandman hotel from 8 October 2021 through to 30 October 2021. The tenant submitted his bill that totalled \$2,435.93 (T#4).
27. The tenant stated that he did not ask permission from the landlord for this expense. He testified that the winds were strong and “conditions were bad”. He stated that he was unable to confirm the temperatures in the house because the thermostats are the “old type” that do not show specific temperatures.

Landlord’s Position

28. The landlord testified that she only heard about this October 2021 hotel expense when she opened the document package she was served in April 2022 regarding this hearing. She testified that no communications were received from the tenant

back in October 2021 when he decided to move his family elsewhere (to a hotel) while still retaining possession of the rental premises.

29. Specific to comments from the tenant regarding “bad conditions” in the rental unit, the landlord testified that October is not yet winter, and that average temperatures for the month were a high of 12 degrees Celsius with a low of 4 degrees Celsius. Related to concerns with “wind” in the unit, the landlord acknowledged that yes, winds were strong last winter, however, there should not have been any notable October 2021 concerns with gaps in the door because as previously mentioned, the sweep on the front door was replaced in July 2021.
30. The landlord also testified, that had there been an actual issue in the tenant’s unit justifying a hotel stay, his renters’ insurance policy would have been used.

Analysis

31. The tenant requested significant compensation for a need (to move his wife and young child elsewhere in October 2021) that he did not communicate to the landlord in advance, and consequently did not seek approval for such a charge in advance. Nor did the tenant provide any meaningful evidence to the tribunal to justify his requirement after the fact for temporarily moving his family elsewhere.
32. As such, I find the tenant’s request for compensation in the amount of \$2,425.00 to be unreasonable and unjustified.

Decision

33. The tenant’s claim for compensation for inconvenience in the amount of \$2,425.00 does not succeed.

Issue 3: Refund of Rent

Tenant’s Position

34. The tenant claimed that his wife originally planned to use the downstairs family room as an office space but that she could not due to the “wind” and “cold”. Consequently, the tenant applied for a refund of rent in the amount of \$2000.00 to represent the portion of the rental premises that was unusable due to “wind”.
35. A review of the Compensation for Costs of Inconvenience data sheet dated 20 March 2022 submitted by the tenant (T#5) indicates that the tenant broke down his request for rent as follows ((4 x \$200 = 800) + (4 x \$300= \$1200)= \$2000):
 - August 2021 = \$200.00
 - September 2021 = \$200.00
 - October 2021 = \$200.00
 - November 2021 = \$200.00

- December 2021 = \$300.00
- January 2022 = \$300.00
- February 2022 = \$300.00
- March 2022 = \$300.00

36. The tenant testified that he had no video or other recordings of his specific concerns with the cold, including no information on the temperature (inside or outside). The tenant indicated that he requested on multiple occasions that the landlord send someone to verify his concerns, despite not providing concrete details (e.g., specific temperature values throughout the rental premises and outside of the rental premises) on the exact nature of his concerns.

Landlord's Position

37. The landlord testified that she felt it unreasonable that the tenant wanted a refund for rent for the summer months as well. She also reported that a child of the previous tenant utilized the downstairs space as a bedroom with no complaints about "cold" or "wind" or any of the other conditions raised by the tenant.

Analysis

38. The tenant requested a refund on rent paid without data or other specific evidence to justify specifically why he was requesting the refund. Specific data is important for making the case, even on the balance on probabilities that something may or may not have happened. Because I did not receive any specific data, I cannot fully understand the extent of the concerns behind this request for refund of rent.

Decision

39. The tenant's request for rent to be refunded in the amount of \$2,000.00 does not succeed.

Issue 3: Validity of Termination Notice Determined

Tenant's Position

40. The tenant indicated that he was seeking guidance on the section 18 termination notice that he received on 1 April 2022 (T#6). The stated move out date for the notice was identified as 30 June 2022.

Landlord's Position

41. The landlord confirmed that the section 18 Termination notice was issued to the tenant on 1 April 2022 and that this notice was served electronically. The landlord also confirmed that she is seeking vacant possession of the rental premises and expects the tenant and his family to vacate by the end of June 2022.

Analysis

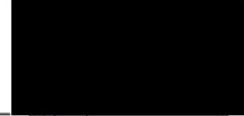
42. Section 18 of the *Act* allows a landlord to terminate a rental agreement on three (3) months notice without having to provide reasons to either the tenant or to this Tribunal. The validity of such a notice is determined by its compliance with any number of provisions of the *Act*. If and where a notice is found to not comply with any particular provision, the notice is deemed not valid.
43. Specific to a termination notice issued by a landlord under section 18 of the *Act*, it is required to comply with each of the following to be deemed valid:
 - Timelines for issuing a notice (18(2) of the *Act*);
 - Specific details on notices issued (18(9) of the *Act*);
 - Specific details on notices issued (34 of the *Act*); and
 - Requirements for service of the notice (35 of the *Act*).
44. Regarding the Section 18 Termination Notice issued to the tenant on 1 April 2022, testimony and evidence received during the hearing indicates that the notice meets all requirements set out in the *Act* above. As such, it is a valid notice and the tenant should expect to move his family and vacate the rental premises by 30 June 2022.

Summary of Decision

45. The termination notice issued to the tenants on 1 April 2022 was a valid notice;
46. The tenant's claim for payment of utilities by the landlord in the amount of \$2,500.00 does not succeed;
47. The tenant's claim for payment by the landlord in the amount of \$2,425.00 as compensation for inconvenience does not succeed; and
48. The tenant's claim for payment by the landlord in the amount of \$2,000.00 for rent refunded does not succeed.

09 June 2022

Date


Jaclyn Casler
Residential Tenancies Board