

Residential Tenancies Tribunal

Application 2023-0304-NL

Decision 23-0304-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:06 a.m. on 24-May-2023.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as “the tenants” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference. Also present was [REDACTED]

Preliminary Matters

4. This application was originally set up to include a counter claim from the landlord (2023-0460-NL), however the counter claim will not be addressed during this hearing. The landlord’s counter application was submitted on 10-May-2023 which did not meet the 10 day deadline, also the landlord has not received the service documents from Residential Tenancies Office to date.
5. The landlord notified of an address change. The landlord’s new address is: [REDACTED]
6. The tenant’s submitted a copy of the rental agreement and states that it is a written agreement with a 1 year fixed term that commenced on 15-June-2022 (TT#1). Rent is \$2000.00 per month due on the first of the month. A security deposit in the amount of \$1000 was paid on 1-June-2023. The landlord agreed with the terms of the agreement.
7. The tenant’s submitted an affidavit (TT#2) with their application stating that they had served the landlord with notice of the hearing on 3-May-2023 electronically by sending it via email to the following address: [REDACTED] The landlord confirmed receiving the document on that day. This is good service.
8. The tenant’s amended the application to include hearing expenses reimbursed in the amount of \$20.00.

Issues before the Tribunal

9. The tenants are seeking:
 - a. Refund of rent \$2000.00
 - b. Refund of security deposit \$1000
 - c. Utilities paid \$372.45
 - d. Snow clearing \$50.00
 - e. Hearing expenses \$20.00

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
11. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 31; Abandonment of residential premises by tenant and Section 14; Security Deposit.

Issue 1: Refund of Rent \$2000.00

Tenant's Position

12. The tenant's are seeking a refund of rent for the month of March as they stated that there was no water to the unit commencing 2-March-2023 due to a faulty pump. The tenant's testified that they were 1 week without water and 3 weeks without the pump working properly. As a result, they did not stay on the premises over night, they were back and forth during the day on several occasions. The tenant's estimate spending roughly 6 days at the premises for the entire month. They stated that their enjoyment of the unit was compromised and just went back and forth to check on the property. Upon arriving on 26-March-2023 the tenant's found a locksmith changing the locks. The locksmith presented the tenants with what appeared to be an abandonment notice (TT#3). The tenant's state that they had purchased a house and moved most of their personal belongings out but paid their rent for the month of March and wished to enjoy the water front property on their terms. The tenant's deny abandoning the property and state that if they had abandoned it, they would not have been there on 26-March-2023 to witness the locksmith on the premises. The tenant's believe that they paid their rent for the month of March but did not fully enjoy the home as the water problem and the lockout from the landlord interfered with their rights and enjoyment as tenants.

Landlord's Position

13. The landlord states that there was a verbal change to the rental agreement whereby both parties agreed to end the tenancy on 15-April-2023. The landlord testified that the tenants had told him in early March that they purchased a new home in [REDACTED] and that they would not be around anymore. The landlord's realtor told him that all personal effects were removed from the premises and for those reasons, the landlord felt that the tenants had abandoned the property and he feared for the safety of his unit especially during the month of March. The landlord changed the locks and took back his unit on 26-March-2023. With regards to the water, the landlord testified that the tenants turned the heaters down to 16 degrees celsius which he feels caused the pump to have problems leading to no water. The landlord felt that the tenants had abandoned the property and he felt that his property

was at risk with little heat on during the winter months. The landlord submitted a video from his realtor dated 14-March-2023 to support abandonment which shows no personal effects in the unit (LL#1). All furniture in the video belongs to the landlord.

Analysis

14. I accept the tenant's testimony that they did not abandon the property. They paid their rent for the month of March and had the right to enjoy the unit at their leisure. A property is only considered abandoned if rent is not paid. Tenants are not obligated to stay in a rented unit every night, they can come and go as they see fit. The landlord feared for his property and stated that the tenants turned the heat down because they were not there. 16 degrees celsius is not below freezing and should not put any unit at risk. When the tenants noticed a water problem, they contacted the landlord immediately fulfilling their obligation as a tenant. The tenant testified that the landlord called his buddy to come investigate the problem. They were without water for 1 week and the pump was not working properly for 3 weeks. The tenants could not stay in the unit, they visited frequently during the day.
15. I accept the landlord's testimony that he felt that his unit was abandoned and at risk. He changed the locks because he wanted to take back his unit. According to the Act, The landlord did not have the right to change the locks under abandonment as rent had been paid for the month of March. The notice of abandonment (TT#1) is an invalid notice. I find that the tenant's were illegally locked out off their residential premises.

16. Section 31 of the *Residential Tenancies Act* states:

31. Abandonment of residential premises by tenant

(2) The tenant is considered to have abandoned a residential premises where;

(a) the tenant has vacated the residential premises;

(b) the rental agreement is not terminated in accordance with this Act or the rental agreement; and

(c) rent is overdue.

(3) Before entering a residential premises for the purpose of taking possession under subsection (1), the landlord shall, not less than 24 hours before entering, post a notice in a conspicuous place on the residential premises stating

(a) The landlord's belief that the tenant has abandoned the residential premises;

(b) The landlord's intention to enter the residential premises for the purpose of taking possession unless the tenant notifies the landlord, before the time set out in the notice, that the tenant has not abandoned the residential premises; and

(c) the day and hour when the landlord will enter the residential premises.

(4) Where the tenant notifies the landlord under paragraph (3)(b) that the residential premises have not been abandoned, the landlord shall not enter the residential premises.

17. I find that the tenants did not abandon the residential premises and I find that the landlord's abandonment notice was not in line with the requirements according to the Act.
18. I find that the landlord illegally locked the tenants out of the unit on 26-March-2023.
19. I find that that the landlord shall reimburse full rent for the period of 26-March to 31-March.
20. With regards to the 1-March to 25-March, I find that although the tenants did not stay at the property, they still visited and had access to the premises for some enjoyment. The unit was fully furnished and available to them. I find that the landlord shall reimburse the tenants 50% of the rent paid for the period of 1-March to 25-March.
21. Daily rent is calculated as follows: $\$2000 \times 12 \text{ months} = \$24,000 / 365 \text{ days} = \65.75 per day. 50% of daily rate = $\$32.87$. See table below for calculation of reimbursement.

Dates	# of days	rent per day	total to be reimbursed
March 1 - 25, 2023	25	\$32.87	\$821.75
March 26 - 31	6	\$65.75	\$394.45
			Total \$1216.20

Decision

22. I find the tenant's claim for refund of rent succeeds in the amount of \$1216.20.

Issue # 2: Refund of Security Deposit \$1000

Relevant Submissions

23. The tenant's submitted a copy of the rental agreement showing payment of security deposit in the amount of \$1000.00 on 1-June-2022 (TT#1). Rental agreement was signed by all parties.

Analysis

24. 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.

25. I find that the landlord did not make a claim with the Residential Tenancies Office within the 10 day timeframe as set out in the Act, thus the landlord do not have a right to retain the security deposit.

26. I find that the landlord shall return the security deposit to the tenants

Decision

27. The tenant's claim for refund of the security deposit succeeds in the amount of \$1000.

Issue 3: Utilities Paid \$372.45

28. The tenants are seeking utilities paid in the amount of \$372.45

Relevant Submissions

29. The tenant's submitted Newfoundland Power bill for the month of March (TT#4).

Tenant's Position

30. The tenant's state that they did not stay at the residential premises for the month of March. They visited frequently and found that the heat was always turned up when they arrived. They testified that someone, mostly likely the realtor was turning up the heat and as a result they feel that they did not have any control over the electricity used for the month of March.

Landlord's Position

31. The landlord stated that he felt that the tenant's were turning the heat down too low and feared for his unit however, he never admitted to having the realtor turn the heat up. The landlord do not feel that he should pay for the electricity for the month of March.

Analysis

32. I accept the tenant's testimony that someone was turning the heat up but there is no proof of that. It has been decided that the tenants were illegally locked out (see paragraph 15), thus the tenants are not required to pay the electricity bill from 26-March to 31-March. As for the remainder of the month, I find it is appropriate to split the electricity bill by 50%.

33. The electricity bill for the month of March was \$372.45. The daily rate is calculated as follows: $\$372.45 / 31 \text{ days} = \12.01 per day . 50% of daily is \$6.00. See table below for calculation of reimbursement.

Dates	# of days	utilities per day	total to be reimbursed
March 1 - 25, 2023	25	\$6.00	\$150.00
March 26 - 31	6	\$12.01	\$72.06
			Total \$222.06

34. I find that the landlord shall reimburse the tenant's for a portion of the utilities used for the month of March 2023.

Decision

35. The tenant's claim for utilities paid succeeds in the amount of \$222.06.

Issue 4: Snow Clearing \$50.00

Tenants Position

36. The tenant's feel that they did not use the property and they paid for snow clearing for the realtor and the locksmith to access the premises.

Landlord's Position

37. The landlord states that snow clearing was not included in the rental agreement thus the tenants were responsible for their own snow clearing.

Analysis

38. I accept the tenant's testimony that the landlord benefitted from the snow clearing with regards to easier access for the realtor and the locksmith but the tenants were back and forth to the property and required the snow clearing services as well. Snow clearing was not a service that was provided by the landlord as per the rental agreement (TT#1). The tenants are responsible to keep the property clean and clear from snow.

Decision

39. The tenant's claim for snow clearing does not succeed

Issue # 5 Hearing Expenses \$20.00

40. The tenant's paid a fee of \$20.00 to file the application. As the tenant's claim has been successful, the landlord shall pay the \$20.00 fee. The tenant's claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

41. The landlord shall:

Pay the tenant's \$2458.26 as follows:

Rent	\$1216.20
Security deposit	1000.00
Utilities	222.06
Hearing expenses...	20.00
Total	<u>\$2458.26</u>

June 2, 2023

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office